UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-23649-rdd

Adv. Case No. 21-07005-rdd

- x

In the Matter of:

PURDUE PHARMA L.P.,

Debtor.

- x

AVRIO HEALTH L.P. et al.,

Plaintiffs,

v.

AIG SPECIALTY INSURANCE COMPANY (f/k/a AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY), et al.,

Defendants.

- x

United States Bankruptcy Court
300 Quarropas Street, Room 248
White Plains, NY 10601

June 21, 2021
10:02 AM

B E F O R E :
HON ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

ECRO: JUSTIN WALKER

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Avrio Health LP v. AIG Specialty Insurance Co. WILL BE CONDUCTED USING ZOOM FOR GOVERNMENT VIDEO CONFERENCING.

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Notice of Agenda for June 21, 202 l Hearing Filed by Paul E. Breene on behalf of Avrio Health L.P., Purdue Pharma Inc., Purdue Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue Pharma of Puerto Rico, Purdue Pharmaceutical Products L.P., Purdue Pharmaceuticals L.P., Purdue Transdermal Technologies L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies. with hearing to be held on 6/21/2021 at 10:00 AM at Videoconference (Zoom Gov) (ECF # 159)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Motion to Stay / Notice of Motion for Arbitration Insurers' Joint Motion to Stay the Claims Against Them in the Adversary Proceeding in Favor of Arbitration filed by Mitchell Jay Auslander on behalf of AIG Specialty Insurance Company (f/k/a American International

Specialty Lines Insurance Company), American International Reinsurance Company (f/k/a Starr Excess Liability Insurance International Limited), New Hampshire Insurance Company. (Attachments:# I Declaration of Mitchell J. Auslander# 2 Declaration of Paul R. Koepff # 3 Declaration of Daren McNally # 4 Declaration of Monica T. Sullivan # 5 Declaration of Arthur J. Liederman # 6 Declaration of George R. Calhoun # 7 Declaration of Michael E. Gorelick # 8 Declaration of Kent A. Wilson# 9 Declaration of Richard Geddes) (ECF #57)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Memorandum of Law in Support of the Arbitration Insurers' Joint Motion to Stay the Claims Against Them in the Adversary Proceeding in Favor of Arbitration (related document(s)57) filed by Mitchell Jay Auslander on behalf of AIG Specialty Insurance Company (f/k/a American International Specialty Lines Insurance Company), American International Reinsurance Company (f/k/a Starr Excess Liability Insurance International Limited), New Hampshire Insurance Company. (Attachments: # 1 Exhibit A - Chart of Arbitration Provisions # 2 Exhibit B - Century 21 Dep't Stores LLC 2/12/21 Hr'g Transcript) (ECF #59)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Opposition to Certain Insurers' Joint Motion to Stay the Claims Against Them in the Adversary Proceeding in Favor of the Arbitration (related document(s)57, 93) filed by Paul E. Breene on behalf of Avrio Health L.P., Purdue Pharma Inc., Purdue Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue Pharma of Puerto Rico, Purdue Pharmaceutical Products L.P., Purdue Pharmaceuticals L.P., Purdue Transdermal Technologies L.P., Rhodes Pharmaceuticals L.P., Rhodes Technologies. (Attachments: # 1 Declaration of Paul Breene # 2 Paul Breene Declaration Ex. 1 # 3 Paul Breene Declaration Ex. 2 # 4 Paul Breene Declaration Ex. 3 # 5 Paul Breene Declaration Ex. 4 # 6 Paul Breene Declaration Ex. 5 # 7 Paul Breene Declaration Ex. 6 # 8 Paul Breene Declaration Ex. 7 # 9 Paul Breene Declaration Ex. 8 # 10 Paul Breene Declaration Ex. 9 # 11 Paul Breene Declaration Ex. 10 # 12 Paul Breene Declaration Ex. 11 # 13 Paul Breene Declaration Ex. 12 # 14 Paul Breene Declaration Ex. 13 # 15 Paul Breene Declaration Ex. 14 # 16 Paul Breene Declaration Ex. 15 # 17 Paul Breene Declaration Ex. 16 # 18 Paul Breene Declaration Ex. 17 # 19 Paul Breene Declaration Ex. 18 # 20 Paul Breene Declaration Ex. 19 # 21 Paul Breene Declaration Ex. # 22 Paul Breene Declaration Ex. 21 # 23 Paul Breene Declaration Ex. 22 # 24 Paul Breene Declaration Ex. 23 # 25

Paul Breene Declaration Ex. 24 # 26 Paul Breene Declaration Ex. 25 # 27 Paul Breene Declaration Ex. 26 # 28 Paul Breene Declaration Ex. 27 # 29 Paul Breene Declaration Ex. 28 # 30 Paul Breene Declaration Ex. 29 # 31 Paul Breene Declaration Ex. 30) (ECF #133)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Reply Memorandum of Law in Support of the Arbitration Insurers' Joint Motion to Stay the Claims Against Them in the Adversary Proceeding in Favor of Arbitration (related document(s)57) filed by Mitchell Jay Auslander on behalf of AIG Specialty Insurance Company (f/k/a American International Specialty Lines Insurance Company), American International Reinsurance Company (f/k/a Starr Excess Liability Insurance International Limited), New Hampshire Insurance Company. (ECF #144)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Reply Memorandum of Law of AIG Specialty Insurance Company, Evanston Insurance Company, and Ironshore Specialty Insurance Company in Support of the Arbitration Insurers' Joint Motion to Stay the Claims Against Them in the Adversary Proceeding in Favor of Arbitration (related

document(s)57) filed by Mitchell Jay Auslander on behalf of AIG Specialty Insurance Company (f/k/a American International Specialty Lines Insurance Company). (ECF #146)

HEARING re Motion for Relief from Stay filed by George Calhoun IV on behalf of Ironshore Specialty Insurance Company (ECF #712) Notice of Adjournment of Hearing (related document(s)712) filed by George Calhoun IV on behalf of Ironshore Specialty Insurance Company. (ECF #2542) Supplemental Response to Motion IRONSHORE SPECIALTY INSURANCE COMPANYS, FORMERLY KNOWN AS TIG SPECIALTY INSURANCE COMPANY, SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY (related document(s)712) filed by George Calhoun IV on behalf of Ironshore Specialty Insurance Company. (Attachments: # 1 Declaration of George Calhoun In Support of Supplemental Brief In Support of Motion for Relief From Automatic Stay) (ECF #2326) Objection to Motion/ Debtors' Objection to TI G's Motion for Relief from the Automatic Stay (related document(s)712) filed by Benjamin S. Kaminetzky on behalf of Purdue Pharma L.P. (ECF #753)

HEARING re Objection of the Official Committee of Unsecured Creditors to the Motion of Ironshore Specialty Insurance Company for Relief from Automatic Stay and Joinder to the

Debtor's Objection to Such Motion (related document(s)753, 712) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF #756)

HEARING re Statement I Ad Hoc Committees Statement in Support of Debtors Objection to TI Gs Motion for Relief From the Automatic Stay (related document(s)753, 712) filed by Kenneth H. Eckstein on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants. (ECF #757)

HEARING re Supplemental Opposition to Ironshore Specialty Insurance Company, formerly known as TIG Specialty Insurance Company Motion for Relief from the Automatic Stay (related document(s)2326) filed by Paul E. Breene on behalf of Purdue Pharma L.P. (ECF #2801)

HEARING re Reply to Motion In Support of Motion For Relief From Stay (related document(s)712) filed by George Calhoun IV on behalf of Ironshore Specialty Insurance Company. (ECF #765)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Motion to Dismiss Adversary Proceeding For Lack of Personal Jurisdiction filed by Barbara M. Almeida on behalf of Chubb Bermuda Insurance Ltd. (f/k/a ACE Bermuda Insurance Ltd.). (Attachments: # I Affirmation of Kevin G. Costello in support of Motion To Dismiss) (ECF #77) Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Memorandum of Law In Support Of Motion To Dismiss For Lack Of Personal Jurisdiction filed by Barbara M. Almeida on behalf of Chubb Bermuda Insurance Ltd. (f/k/a ACE Bermuda Insurance Ltd.). (ECF #78)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Motion to Dismiss Adversary Proceeding for Lack of Personal Jurisdiction filed by Arthur J Liederman on behalf of HDI Global SE (f/k/a Gerling-Konzern General Insurance Company). (Attachments:# I Pleading Affirmation of John McCammon in Support of Motion to Dismiss) (ECF #90) Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Memorandum of Law in Support of Defendant HDI Global SE's Motion to Dismiss for Lack of Personal Jurisdiction (related

document(s)90) filed by Arthur J Liederman on behalf of HDI Global SE (f/k/a Gerling-Konzern General Insurance Company). (ECF #92)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Motion to Dismiss Adversary Proceeding filed by Thomas Maeglin on behalf of Liberty Mutual Insurance Europe SE (f/k/a Liberty International Insurance Company). (Attachments: # I Affirmation of Julie Tripp # 2 Exhibit, Exhibit A to Tripp Afl) (ECF #84)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Motion to Dismiss Adversary Proceeding For Lack of Personal Jurisdiction filed by Richard Joseph Geddes on behalf of XL Bermuda Ltd. (ECF #88)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Memorandum of Law IN SUPPORT OF THE MOTION OF LIBERTY MUTUAL INSURANCE EUROPE SE TO DISMISS FOR LACK OF PERSONAL JURISDICTION (Doc 84) (Maeglin, Thomas) (ECF #85) Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In

Motion to Dismiss Adversary Proceeding For Lack of Personal Jurisdiction filed by George Calhoun IV on behalf of Allied World Assurance Company, Ltd .. (Attachments:# I Affirmation of James Byrnes) (ECF #82)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Memorandum of Law In Support of Defendant Allied World Assurance Company Ltd's Motion to Dismiss For Lack of Personal Jurisdiction (related document(s)82) filed by George Calhoun IV on behalf of Allied World Assurance Company, Ltd. (ECF #83)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Motion to Dismiss Adversary Proceeding For Lack Of Personal Jurisdiction filed by Paul R Koepff on behalf of Arch Reinsurance Ltd. (Attachments: # I Affirmation of Robin E. Saul) (ECF #80)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Memorandum of Law In Support of Motion To Dismiss For Lack Of Personal Jurisdiction filed by Paul R Koepff on behalf of Arch Reinsurance Ltd. (ECF #81)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Motion to Dismiss Party filed by Dan D Kohane on behalf of Chubb European Group SE (f/k/a ACE Insurance S.A.N.V.), Darag Insurance UK Limited (f/k/a The Underwriter Insurance Company Limited), QBE UK Limited (f/k/a QBE International Insurance Company Limited), SR International Business Company SE (f/k/a SR International Business Insurance Company Limited), Zurich Specialties London Limited (f/k/a Zurich Reinsurance (London) Limited). (Attachments: # I Declaration of Kent Wilson# 2 Affirmation of Fran Eaton# 3 Affirmation of Nathan Barnett #1 # 4 Affirmation of Nathan Barnett #2 # 5 Affirmation of Sara Mitchell# 6 Affirmation of Simon Cheal # 7 Memorandum of Law) (ECF #73)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Amended Memorandum of Law and letter of explanation (related document(s)73) filed by Dan D Kohane on behalf of Aspen American Insurance Company, Chubb European Group SE (f/k/a ACE Insurance S.A.N.V.), Darag Insurance UK Limited (f/k/a The Underwriter Insurance Company Limited), North American Elite Insurance Company, QBE UK Limited (f/k/a QBE International Insurance Company Limited), SR

International Business Company SE (f/k/a SR International Business Insurance Company Limited), Zurich Specialties London Limited (f/k/a Zurich Reinsurance (London) Limited). (ECF #96)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Motion to File Under Seal Motion to Seal Documents Submitted in Connection with Plaintiffs' Consolidated Memorandum of Law in Opposition to Defendants' Motions to Dismiss for Lack of Personal Jurisdiction (related document(s)88, 84, 90, 77, 82, 80, 73) filed by Jenna A Hudson on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants. (ECF # 129)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Reply Memorandum of Law In Support Of Motion To Dismiss For Lack Of Personal Jurisdiction (related document(s)77) filed by Harris Wiener on behalf of Chubb Bermuda Insurance Ltd. (f/k/a ACE Bermuda Insurance Ltd.). (ECF #137)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a

American In Reply Memorandum of Law In Support Of Motion To Dismiss For Lack Of Personal Jurisdiction (related document(s)90) filed by Arthur J Liederman on behalf of HDI Global SE (f/k/a Gerling-Konzern General Insurance Company). (Attachments: # 1 Declaration of John Yacoub) (ECF # 139) Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Reply Memorandum of Law in Support of its Motion to Dismiss for Lack of Personal Jurisdiction filed by Richard Joseph Geddes on behalf of XL Bermuda Ltd. (ECF # 140)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Reply Memorandum of Law IN SUPPORT OF THE MOTION OF LIBERTY MUTUAL INSURANCE EUROPE SE TO DISMISS FOR LACK OF PERSONAL JURISDICTION (related document(s)84) filed by Thomas Maeglin on behalf of Liberty Mutual Insurance Europe SE (f/k/a Liberty International Insurance Company). (ECF #142)

HEARING re Liberty Mutual Insurance Europe SE (f/k/a Liberty International Insurance Company). (ECF #142)

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HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a

American In Reply to Motion (related document(s)77) filed by George Calhoun IV on behalf of Allied World Assurance Company, Ltd .. (Attachments:# 1 Affirmation of J. Byrnes) (ECF #145)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Reply Memorandum of Law In Support Of Motion To Dismiss For Lack Of Personal Jurisdiction (related document(s)80) filed by Harris Wiener on behalf of Arch Reinsurance Ltd .. (Attachments: # 1 Reply Affirmation of Robin E. Saul) (ECF # 138)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Motion to Dismiss Party (related document(s)73) filed by Lee Scott Siegel on behalf of Chubb European Group SE (f/k/a ACE Insurance S.A.N.V.). (Attachments:# 1 Reply Brief# 2 Exhibit Declaration of Kent A. Wilson) (ECF #135) Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Motion for More Definite Statement filed by William T. Russell Jr. on behalf of Gulf Underwriters Insurance Company, St. Paul Fire and Marine Insurance Company (ECF #71)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Memorandum of Law in support of Motion for a More Definite Statement (related document(s)71) filed by William T. Russell Jr. on behalf of Gulf Underwriters Insurance Company, St. Paul Fire and Marine Insurance Company. (ECF #72)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Demand for Jury Trial filed by Lauren M. Macksoud on behalf of XL Insurance America, Inc. (ECF # 106) Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Opposition to Defendants' Motions for More Definite Statement (related document(s)72, 63, 71, 62) filed by Jenna A Hudson on behalf of Ad Hoc Committee of Governmental and Other Contingent Litigation Claimants.(ECF # 128)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Reply to Motion - Reply Memorandum in further support of Motion for a More Definite Statement (related document(s)71) filed by William T. Russell Jr. on behalf of Gulf Underwriters Insurance Company, St. Paul Fire and

Marine Insurance Company. (ECF #141)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Pre-Trial Conference

Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

THE COURT: Okay. Good morning. This is Judge Drain. We're here in In re Purdue Pharma, and more specifically Purdue Pharma LP et al versus AIG Specialty Insurance Company et al.

I have the agenda for today's hearing, and I'm happy to go down the agenda unless there's been a change in it that the parties have agreed on. And that would mean that the first matter on the agenda are the motions to stay this adversary proceeding in favor of arbitration by those defendants who have arbitration provisions in their policies.

So I reviewed the parties' pleadings on this through the two replies filed and the related exhibits, so you should assume I have that background in this, but I'm happy to hear brief oral argument as well.

MR. AUSLANDER: Good morning, Your Honor. May it please the Court, this is Mitchell Auslander of Willkie Farr & Gallagher, counsel for the AIG defendants.

First, may I ask can you hear me all right?

THE COURT: I can hear you and see you.

MR. AUSLANDER: Okay. I can see you and hear you too.

THE COURT: Okay.

MR. AUSLANDER: So this is a motion to stay this

adversary proceeding in favor of arbitration. As Your Honor noted in the In re (indiscernible) the law is quite developed in this area, and that was back in 2013. Since then, we have more cases like ResCap, and MF Global, and most recently Roman Catholic Diocese that largely confirm that law.

But what I -- what I'd like to do is turn to what I think is the part of the -- of (indiscernible), which is under the outcome of the insurance coverage case is essential to the Purdue bankruptcy, such that the Court should override the parties' antecedent agreements (indiscernible) FAA.

And the way I'd like to do that is to just briefly say what this case is and turn to Plaintiffs' more significant arguments in opposition to the motion. And then finally, just deal with a few issues the Plaintiffs raised with regard to three separate policies that are at issue here that don't necessarily apply to all of the arbitration insurers.

So the case is a contract case, plain and simple. It's not a plain and simple case, but the concept is it's a contract case. Plaintiffs are asking for a declaratory judgment that they're entitled to insurance coverage for their opioids liability. To make that determination, there'll have to be an interpretation of the contracts that

the parties entered into. There are no federal claims, and there are no claims brought under the bankruptcy claim.

So we respectfully submit that this is quintessential non-care case under (indiscernible) pipeline and all of the cases in the second circuit that have come on since then.

So now I'd just like to turn to the arguments that Plaintiffs make. Their biggest argument seems to be that the insurance proceeds constitute a significant asset of the estate and that therefore the matter should be handled in the bankruptcy court.

There are several problems with this, the first being there is no law that says that just because there is a significant asset of the estate involved that that renders the case core. In fact, there's a legion of cases cited in our brief, so I won't go through them, that say that adding to an estate, augmenting to an estate even with a significant asset is not enough to render a case core. That starts with In re Orion, U.S. Lines, Roman Catholic Diocese, and so forth. So it being a significant asset is simply not enough.

In this case, the insurance proceeds are not even the most significant asset of the estate. The Plaintiffs use the number $3.3 billion of insurance policy limits, which I will come back to, but they never come to grips with

the fact that the estate involves what may be in excess of $10 billion.

As you know, Your Honor, the Sackler's have agreed under the proposed plan to contribute $4.5 billion, and the company will be in the estate, so we have here, unlike in other cases, 10 billion in assets of which the insurance proceeds are for sure a significant amount of money but not even the most significant.

With respect to the $3.3 billion, we're not exactly sure how the Plaintiffs calculated that number. We think that they simply added up all of the limits of all of the policies that they bought from all of their insurers over many years. But of course that is not -- that is not what the arbitration policy is. The arbitration policies are a subset of that. The limits of the arbitration policies are a subset of that, so it's not $3.3 billion.

The insurers have been unable to figure out exactly how much is at issue in this adversary proceeding, obviously something short of what the Plaintiffs intend. But -- and that's because the parties are having discussions about which policies are actually in play here and which ones are not, but we have some idea of what the amount is because counsel for Purdue, my friend Ann Kramer submitted an affidavit -- a declaration, I should say -- in connection with the personal jurisdiction motions, which refers to a $1

billion tower of insurance, which includes the Bermuda Insurance. So we think that that is around the amount of money that is at issue in the arbitrations or in the alveary proceeding.

Now beyond that, Ms. Kramer pointed out in her declaration that the lower layers, some of the lower layers of that billion-dollar power have already been exhausted, so what we're dealing with here is something less than $1 billion. And that is less than 10 percent of what the total assets of the estate will amount to.

If we needed any further proof that the insurance recoveries are not essential, not core to the bankruptcy, we just have to look at the history of the bankruptcy proceeding. The bankruptcy case was filed on September 15, 2019. This adversary proceeding concerning the insurance was not filed until January 29, 2021. It's hard to see how Plaintiff can argue the essential nature of proceeds when the case has been going on for 16 months, and they haven't brought them into -- the policies into focus.

Further, the plan itself doesn't rely on any insurance recoveries. It can be confirmed in all post-confirmation commitments and be kept without any insurance at all.

And lastly on this point, Your Honor, insurance recovery is not even mentioned as a risk factor in the

disclosure statement. One would think that if it was so important and if there was a need to move quickly to get done with the insurance coverage issues, as the Plaintiffs are now saying, one would expect to see something in the disclosure -- in the risk factors of the disclosures.

The second argument that Plaintiffs make that I want to address is that if matters go to arbitration, there will be delayed payments to the creditors. The fact is, based upon the way this plan -- proposed plan is laid out, there will not be any delay in the timing of payments because the plan lays out in detail when the creditors will be paid and how much.

It's true that the insurance recoveries may accelerate the time when personal injury claimants receive payments, but they are still scheduled to get the payments as indicated in the plan, and it's not as though anybody will receive payments right away anyway because there is, of course, a claim processing system in the plan that will have to be satisfied before anybody gets paid.

Bottom line on this one, Your Honor, is all adversary proceedings have consequences for the debtor and the creditors. That has been noted in cases before and in Orion more recently by Judge Oetken in the district court where he said in ResCap the lateral consequences of state law actions do not necessarily make actions poor, and that

is certainly the case here.

Next, the Plaintiffs point to insurance coverage defenses that the insurance companies may assert one day. I say may assert because there have not been a statement of the Plaintiffs position as we would expect to have in an arbitration proceeding where it's not noticed pleading. It's you lay out your whole case, and then the defendants, in this case the insurance companies, would respond in detail with their defenses. We don't -- we don't have that here yet, so what the defenses will be is a matter of speculation at this point.

But in any event, the defense that they express some concern about are the consent to settle provision that is contained in many of the policies, and the pay first provision that's contained in some of the policies.

With respect to the consent provision, and in fact the pay first provision, these are fairly common items that appear in insurance policies. And if the fact that an insurance company might one day raise those as defenses or even raise them as defenses, could render a matter core and remove it from the -- remove it from arbitration, we wouldn't have many arbitrations in large bankruptcy cases. In fact, there was a consent to settle provision in the Roman Catholic Diocese case, and the case was not deemed to be core.

So the point here, Your Honor, is it can't be just these common provisions, fairly common provisions, that appear that render a case core. In any event -- sorry. In any event -- I'm sorry. Was Your Honor going to ask me something?

THE COURT: I will, but why don't you finish what you were saying?

MR. AUSLANDER: All right.

THE COURT: Unless you're going on to a different topic.

MR. AUSLANDER: No, I'm still on the complaint -- the Plaintiffs' arguments.

THE COURT: Right.

MR. AUSLANDER: Unless you (indiscernible).

On this point, the only thing I wanted to add was that, again, we're talking about a very -- a relatively small amount of insurance proceeds, so the merit -- or lack of merit -- of the defenses shouldn't matter with respect to whether this is a core proceeding.

And -- I'm sorry. Go ahead.

THE COURT: So let me ask you this question. Let's assume that the plan provides for a solution to the pay-first provisions, you know, the Limon case or some other solution that they come up with so they don't actually have to pay it.

And similarly, assume for the moment that the Debtors actually join the issue of the consent point so that those two points are actually heard at the confirmation hearing.

Would you agree that the Court's determination of those two issues to the extent they were determined as part of the confirmation hearing, and obviously assuming that there's a final order, would then be binding on an arbitrable -- arbitration panel as far as that prior determination?

MR. AUSLANDER: I wouldn't -- I wouldn't put it that way, Your Honor. I don't think that the -- it would necessarily be binding, nor do I think that the arbitration insurers are in a position today to say this or waive it. But I would say this. It would be difficult, it seems to me, to raise those defenses in the context of the bankruptcy plan where the creditors, including the insurance companies, had an opportunity to object to it. But I don't think it would necessarily be binding, and those are issues that could be raised -- wouldn't necessarily be raised, but they're issues that could be raised.

THE COURT: Well, when you say the -- I obviously was posing a hypothetical, and being a careful lawyer, you don't want to agree to a vague set of hypotheticals, but when you say it wouldn't be binding or wouldn't necessarily

be binding, is that because the arbitration panel would not be bound by principles of claim and issue preclusion or for some other reason?

MR. AUSLANDER: Arbitration panels can be bound by issue preclusion as a matter of law, and I think actually that works -- that work -- that can work both ways. But it -- of course, it would depend upon what the plan said and what exactly the Court ordered with respect to those particular two issues, which as you say is hypothetical. So I couldn't say with certainty that they would be bound by it, but I would just repeat that, you know, what the Court has to say on those issues is going to matter both with respect to whether the insurance companies actually raise those defenses and what the arbitrators do about them.

THE COURT: Okay. One of the reasons I'm asking is that in the Netflix versus Relativity case, the Circuit actually found that the court's implementation of a plan that it believed provided for a certain result led it to conclude that that implementation or the action to further the implementation would be core and that it couldn't be heard in a different forum.

MR. AUSLANDER: Well, in Netflix -- the big difference in Netflix is the outcome of that dispute could've destroyed the entire revenue stream of the debtor, and that's what rendered it core in that case.

Here, as I've explained, the asset that we're talking about, the problem that we're talking about is -- it's a relatively small asset. Netflix, the film rights mainstream was what that case was -- was largely, although not exclusively, about. And I believe the Court specifically did say that the revenue -- the revenue stream could be affected in a way that would render the case core.

THE COURT: Okay.

MR. AUSLANDER: Okay. The last point I would make on the pay first provision in particular is that in U.S. Lines, the pay first provision was all over the policy. It was contained in all of the policies. Here, we have it in some but not all of the policies, and Plaintiffs cite to I think four of the 16 arbitration policies that contain pay first provisions, but they're not in all of them.

THE COURT: Well, fair enough, but on the other hand, under the rationale of the U.S. Lines case, given the plan that had been already confirmed there, you would have a potentially seriously inequitable result if the payments came out first and then it was determined later that it wouldn't be reimbursed by insurance, and I don't think when you're -- when you're construing inequitable results, it really depends on whether it's only in respect of certain of the payments and not of all of them.

MR. AUSLANDER: Your Honor, I mean, I think there

are payments a few things on that. If there are only a few policies that have, let's call it, this problem, the problem that they have to be paid first, and there are others where the claimants are going to get paid with insurance money after, of course, the money from the estate, I don't think the fact that there are a few of those policies should matter.

But in any event, you're right that in the U.S. Lines case, there was a potentially inequitable result if the insurance wasn't considered, and that's because the insurance was the sole cash available to pay the personal injury claimants. Obviously that is not the case here. Here, the personal injury claimants are going to be paid $300 million immediately and $700 million over time without any insurance recovery at all.

Furthermore, in U.S. Lines, as you were indicating, Your Honor, the insurance proceeds wouldn't be made available until the debtors paid the claims. And the Court, the Second Circuit in that case, said because the debtor was insolvent, there wouldn't have any ability to pay those claims unless there were what the Court called complex and creative transactions that they could enter into.

Here, there's mechanisms for paying those claims. They're laid out in the plan, so there isn't going to be a problem paying those claims, and there isn't going to have

to be a redistribution of assets after the -- after the plan is confirmed.

So I think as far as the consent -- going back, the consent to settle and the pay first provisions are concerned, it's understandable based upon the caselaw a lot of the plaintiffs have raised them, but in the context of this case, they don't render the matter core.

The next major argument as I -- as I read their papers -- that Plaintiffs make relate to the process of arbitration, meaning that a Plaintiff had said, "Well, there are going to be -- if it's not -- if the case isn't maintained, there are going to be a lot of arbitrations, so the problems will not be decentralized in the bankruptcy court. It'll be time consuming. It'll be -- it'll cost money, and there's a risk of inconsistent rulings."

Well, Your Honor, these kinds of considerations are always present when there are arbitration contracts that contain arbitration provisions.

Purdue bought many insurance policies over many years from many insurance companies, some of which contain arbitration provision, some of which do not contain arbitration provisions.

If one were to say, okay, there are logistical considerations and logistical problems with having arbitrations in the context of the bankruptcy case, here

again pretty much all large insurance cases that have arbitrations in them will have to stay in the bankruptcy court, and that's just not law, and the Plaintiffs don't cite a case for that proposition.

By contrast, Judge Bernstein in In re Hagerstown 277 B.R. 181 said -- and I'll quote him here, "the strong federal policy favoring arbitration trumps the usual considerations that judicial economy and efficiency, thus arbitration may be required, even though it will require several litigations and possibly lead to inconsistent results."

It is not the nature of the bankruptcy case that has caused this problem here. The logistical issues arise from the antecedent contracts that Purdue entered into voluntarily over a course of time. And given the strong public policy favoring arbitrations, they can't -- they can't walk away from them now because it is not convenient.

The other point I'd like to make about the logistical problems with arbitrations -- nobody can tell what the order will be of arbitrations, how many there will be, what will happen, but if Purdue goes down the path of arbitrations, typically what happens -- or what often happens is you have some basic arbitrations that take place, and decisions are rendered in those arbitrations, and that gives the parties a pretty good idea of what -- how the

issues are going to turn out, the legal issues as applied to the facts. And so while I certainly couldn't say there aren't going to be a multiplicity of arbitrations, that would not necessarily be the case (indiscernible) practice. So the logistical problems with respect to the Plaintiffs are a little bit overbroad.

THE COURT: So in the Residential Capital case, Judge Lane stayed arbitrations in respect of excess coverage so that the litigation of the primary coverage could go ahead first. Do we have those issues here? It's really a question for both you and the Plaintiffs.

MR. AUSLANDER: It's a little different here, Your Honor, because in ResCap we were talking about the tower of insurance, and the bottom layers were the ones that were allowed to go first, and the top ones were stayed, as I think Your Honor is pointing out. Here, we're talking about the entire tower, so it's not the case that this would necessarily lend itself to a ResCap type of stay analysis.

The -- and I'll speak for my own clients on this. There certainly can be discussion with Purdue about whether it makes sense to go ahead with all of the arbitrations or maybe some order of arbitrations to make it make more sense than just having a free-for-all where everybody is kind of free to demand arbitration on everybody else, which isn't going to happen as a matter of practice. And for my clients

anyway, I certainly would commit to speaking to Purdue about how to handle that -- the tower of arbitrations.

So that brings me to the end of the Plaintiffs' arguments with respect to all of the insurers. They also make some arguments with respect to three of the insurers, one of which is my client, AISLIC, Evanston, and Ironshore.

The first argument that they make is that those policies issued by those insurance companies have service-of-suit provisions. Service-of-suit provisions essentially say that if the insurance company doesn't pay the claim, they agree to (indiscernible) jurisdiction (indiscernible).

The courts in this circuit have addressed this a number of times and have explained that the service-of-suit clause is not an alternative to arbitration, part and parcel of arbitration, meaning the service-of-suit clause is there so that if there's an arbitration award that is not paid by the insurance company, the Plaintiff's policyholder can go forward to enforce the arbitration award.

And it's pretty straightforward in this circuit. One of the cases is a case called NECA Insurance, Ltd. against National Union. The Second Circuit has also spoken on this issue in Montauk Oil Transportation against Steamship Mutual. So I think that's -- that is a bit of a -- to use the overused expression -- red herring.

The next argument that the Plaintiffs make is with

respect to just two of the policies, one issued by AISLIC and one issued by Evanston. And what they say there is that the particular arbitration provisions in those agreements are not broad enough to capture this insurance coverage dispute

The provision itself says "in the event of a disagreement as to the interpretation of the policy, the disagreement shall be submitted to binding arbitration before a panel (indiscernible)."

Now, the complaint itself in this case, Plaintiffs' complaint itself, specifically alleges that "Debtors are entitled to have the debtor's insurance policies interpreted or construed in a manner that maximizes insurance protection." So right there we know that even the Plaintiffs understand that there's going to have to be an interpretation of the policies.

But even if they hadn't alleged it, we know that anyway because insurance coverage disputes, particularly complex ones like this, always involve and in this -- interpretations of the policies terms like bodily injury. What is the occurrence in the context of opioids litigation where the occurrence could mean many different things? What is the bodily injury when you have governments that are suing the opioids manufacturers? What constitutes that bodily injury? Is it when the person ingests? Is it an

opioid when the person gets sick? (Audio Drops) kinds of issues that are going to come up, and they will involve contract interpretation.

The Plaintiffs make an argument that I have to confess I did not fully understand, which sounded like there are predominantly factual issues that have to be resolved, and that is somehow beyond the scope of the arbitration provisions. And if I've misinterpreted, I'm sure I'll be told that shortly, but I'm not sure where that gets them because in all cases there are mixed questions of policy interpretation and factual issues. That's the nature of insurance coverage disputes. And of course, there will be (sound drops) interpretation that will have to rely on whatever (sound drops).

THE COURT: Well, I guess the issue here is whether the arbitrations with respect to these two policies would bleed over into determining the facts. And I gather from your argument that that would be precluded, that it would really just be interpreting the language as applied to agreed facts for purposes of the arbitration.

MR. AUSLANDER: I don't know that the facts -- I would have to say I don't know whether the facts will necessarily be agreed. But at the end of the day, there will be facts. And I would think that evidence will be taken in the arbitration proceedings -- maybe, maybe not.

Depends on what the parties end up stipulating to.

And so I don't want to discount the possibility that there could be facts that overlap with policy interpretation. I think that will probably be the case. But doubts, as you know, Your Honor, about whether an issue is arbitrable or not, or a case is arbitrable or not, are always decided, resolved in favor of arbitration in this circuit.

So there is -- this is going to involve major policy interpretation, and the fact that there may be some factual issues that have to be decided as well doesn't alter the fact that the case has to go to arbitration.

The final issue regarding the other -- the three other insurance policies is an issue for Evanston Insurance Company, not my client. And so Evanston's counsel, Jodi Green, may want to speak to that. But before I turn the mic over to her, I would ask you, Your Honor, do you have any more questions for me?

THE COURT: No, I don't at this point.

MR. AUSLANDER: Thank you, Your Honor. Ms. Green? She may not have anything.

MS. GREEN: Yes. Good morning, Your Honor.

THE COURT: Good morning.

MS. GREEN: Jodi Green on behalf of Evanston Insurance Company. I hope you can hear me okay.

THE COURT: Yes, and see you.

MS. GREEN: Great. So I'll briefly address the arguments made by the Debtors in respect of Evanston which is, you know, at its core that Evanston is an excess follow form insurance company. The policy follows form to an underlying controlling policy, which is as set forth in our briefing the AISLIC policy or AIG policy. Purdue asserts that it is ambiguous as to what policy Evanston actually follows and therefore states to the Court simply that the policy should be construed against Evanston and in favor of no arbitration.

Your Honor, that argument, it simply does not follow. Excess follow form policies are very common. They identify an underlying policy. Purdue has not provided any evidence to indicate that there is some other policy other than the AIG or AISLIC policy that applies. Instead, it indicates in its briefing that during the policy periods at issue, there may have been three underlying policies to which Evanston followed form. Curiously, Purdue does not identify what those three policies potentially are, and Evanston is not aware of any policy other than the AISLIC or AIG policy, which we identified in our briefing and declaration in support.

Essentially, to accept Purdue's argument that the service-of-suit clause in the Evanston policy should control

would be to accept that the policy has no operative coverage grant, it has no operative terms because it follows no identifiable policy. If that were the case, there would simply be no coverage at all, which is a result I doubt Purdue intends.

So there is simply nothing to support Purdue's bald assertion that the Evanston policy follows form from three underlying policies. There is only one. The only evidence submitted supports that proposition.

And the ambiguity argument, you know, essentially under New York law, before turning to contra proferentem, the Court should consider extrinsic evidence as -- and as I stated, the only evidence submitted indicates that the Evanston policy follows AISLIC and therefore incorporates the arbitration clause, and arbitration should be compelled for the reasons state previously.

Thank you.

THE COURT: Okay.

MR. KOEPFF: Your Honor, this is Paul Koepff for Arch. Can I have a few words to answer some of your questions? Would that be permissible?

THE COURT: Sure.

MR. KOEPFF: Thank you. Your Honor, my name is Paul Koepff. I'm with Clyde and Co, and I represent Arch. Let me first deal with a couple of questions because the

arbitration insurers obviously have conferred the Court today.

And one question that came up was multiple arbitrations. All of us, I believe, are prepared to commit not to commence arbitrations. We're prepared to agree to a stay on arbitrations. That was the solution that happened in ResCap. And when we were before Judge Lane, we were at a hearing, and the Bermuda insurers in ResCap all agreed to a stay so that the ResCap plaintiffs could litigate. And even today, that stay is in effect. Even today, the ResCap plaintiffs are still litigating coverage agent the non-arbitration insurers.

So yes we would (indiscernible) agree to a stay. Your Honor could order a stay, and then we could work with the Plaintiffs on (indiscernible). Okay. That's the first point.

The second point is -- and this also happened in ResCap. I think it's in part an answer to your question. I don't think any arbitration insurer intends to litigate or relitigate bankruptcy rulings such as if you approved the settlement of the bankruptcy plan. We committed to Judge Lane in ResCap, and I'm sure the arbitration insurers here would agree. They're not going to relitigate what Your Honor has ruled in the context of this bankruptcy. There are issues -- and this happened with Judge Lane. He noted

that. Whether we could say we relinquish consent under the policy is a different issue. It's not a bankruptcy issue. It's nothing that the bankruptcy court will decide in the bankruptcy proceeding.

My client only got notice undisputed in August 2020. We have no information at all to determine whether we could consent or withhold consent, so we've reserved on that issue, but that would be a kind of indicia that goes to the arbitration if and when that happens.

Now let me deal with a couple of your questions. You asked about pay-first policies. I think the record is clear not all the policies in this case are pay-first. My client followed form to underlying Liberty and Mutual policy, which is not a pay-first. There are other such examples.

Number two, I think one point I really wanted to stress in response to one of Your Honor's questions, we're dealing with international arbitration agreements for the Bermuda insurers, and the law is clear. This was too with Judge Glenn in MF Global, with Judge Lane in ResCap. There's a case called Bethlehem Steel. All of these courts reconfigured international arbitration agreements get more deferential treatment in this very area. And that's what those courts hold, and there's less discretion for the bankruptcy judge to deal with that.

I think that's all I have to say, Your Honor. Thank you for your patience.

THE COURT: Okay. But as to the pay-first point, Bethlehem and the statements of the law in the other two cases really isn't specific as to pay-first. It's just a general proposition of law, right?

MR. KOEPFF: It's a general proposition of law, but I know it was relied upon in U.S. Lines. I know it was relied upon by Plaintiffs here. All I'm saying is there are a number of policies which even Plaintiffs concede are not pay-first. And even if they are pay-first, we say it doesn't make a difference. Yes, Your Honor.

THE COURT: Okay. Okay. Anyone else want to speak on the Defendants' side before we turn to the Plaintiffs?

Okay. Why don't I hear from the Plaintiffs then?

MR. BREENE: Your Honor, Paul Breene, Reed Smith, on behalf of Debtors. Can you hear me okay?

THE COURT: Yes, fine. I can see you too.

MR. BREENE: Thank you, Your Honor.

Your Honor, the insurance companies' motions are asking this Court to deny jurisdiction over matters affecting what we will show, and I think Your Honor will agree, are core jurisdictional matters before this Court. Instead, they would allow these matters to be handled by

numerous arbitral panels in various jurisdictions around the globe.

In fact, what Mr. Koepff just said is they'd be more than happy to just stay them and wait a couple of years and not do anything with these but not be bound.

This adversary proceeding is core under well-established Second Circuit precedent, and we will go through it. Because the matter is core, the Court has discretion to determine whether to enforce the arbitration clauses and various insurance policies.

And you know, Your Honor, we believe this Court should exercise its discretion in favor of bankruptcy code, policies of efficiency and centralization, bankruptcy proceedings which under the particular (indiscernible) and unique facts of this case, frankly with which counsel who have argued today have scrupulously avoided, will show that the needs and the policies of the bankruptcy code are far more compelling than the Federal Arbitration Act favoring arbitration.

And Your Honor, I want to start sort of in the middle here because at one point when -- you asked Mr. Auslander a question, and the question really dealt with whether not didn't U.S. Lines indicate that it might be problematic if money that was designated for one constituency or set of claimants had to be diverted to

another constituency or set of claimants.

In fact, the U.S. Lines quote that I believe you were referring to comes on Page 639 of U.S. Lines. "If the trust were initially to pay the claimant with assets earmarked for other creditors, only to be informed afterwards that the payments did not trigger the Clubs'," that's the insurance companies in that instance, "indemnification obligation, the results would be an inequitable distribution among the creditors. Therefore, in order to effectuate an equitable distribution of bankruptcy estate, a comprehensive declaratory judgment is required to determine whether a chosen payment plan will trigger the indemnification obligation, and two, the amounts payable under the insurance contracts."

Now I believe that was the quote from U.S. Lines that Your Honor was referring to. And in response to that, Mr. Auslander said it's not a problem here. And he said it's essentially not a problem here because he correctly notes that under the plan, the PI -- the personal injury claimants are slated to collect $300 million on the effective date and that thereafter, assuming there is no insurance recovery, they will get on a schedule that is set forth in the plan 200 -- and additional $200 million by July 30th, 2024; an additional $100 million by July 30, 2025; an additional $100 million by July 30, 2026.

So bringing the total that the -- that the personal injury claimants could collect without any insurance to 700 million. And as Your Honor is I think aware, the amount that they could collect assuming that we are successful in pursuing the insurance coverage only increases -- or does increase by $50 million.

But the more essential point here, and the point that the arbitration-asserting insurance companies have completely failed to reckon with in either their papers or in their argument today is where does that additional $400 million come from? It comes from the MDT Trust, and it is the residual value of the estate. And where is that money earmarked to go now? And this is exactly the concern that the U.S. Lines court had expressed. That money is currently earmarked to go to the National Opioid Abatement Trust for the benefit of state and municipal creditors, and it is scheduled to go to the Tribe Trust for the benefit of the tribe claimants.

All of that money, that 400 million which will then be diverted away from abatement, will go to the claims. So we're not just arguing here about the money that is directly going to the claims. That money has to come from somewhere, and where it's coming from is out of the abatement trust. So let's just be clear why this matter is so tied up with the success of the plan.

THE COURT: I guess to me, the difference is that the beneficiaries of those two trusts have agreed to this distribution. They took the risk on it, which is probably one of the reasons that it's only 50 million that would come in from insurance recoveries thereafter. That seems to be a distinguishing -- a significant distinguishing fact from the U.S. Lines case where the payments to the PI classes were question marked as far as where they would be coming from if there wasn't going to be insurance.

MR. BREENE: Well, that's true, Your Honor. But what the Court said is, you know -- again, as I read U.S. Lines, the money -- they're -- the money to go to the asbestos personal injury claimants was not the only money in the estate, and the money was going to be diverted, you know, to the extent that there were the pay first provisions, which the counsel has admitted the majority of the policies involved in this case have pay first and, in fact, you know, the Bermuda form policies are reimbursement policies. So whether they use the term pay first or reimbursement, they will claim that the money has to be paid first.

So the issue there is the -- yes. The personal injury claimants have taken this risk, but I'm not so sure that the abatement trusts, although they are -- they -- this is the way the plan is laid out, have potentially taken this

risk. I think that's what they are getting, and they are hopefully and expecting to get the money that would otherwise go to the personal injury claimants. So --

THE COURT: But doesn't the plan make it clear that if the insurance -- I think they do know that that's the risk they're taking, unlike in U.S. Lines. I guess that's -- again, I mean, that's how I distinguish the two.

MR. BREENE: So Your Honor, the -- let's go to another case that's relied upon by claimants, and that's ResCap because I think that, you know, Judge Lane's decision there is somewhat instructive.

Now, he found that the matter was not a core proceeding, but he -- if you look at the reasoning there, first of all, it did not involve the pay first issue. It was distinguishable from U.S. Lines on those -- on that ground. But a very important point, and this really goes to Mr. Koepff's point on the stay issue, is it was unclear -- entirely unclear -- whether or not the third level excess policies in ResCap were even going to be reached.

I think that the insurance companies here, and I think the arguing counsel have conceded that, you know, in all likelihood, all of the coverage that is available will be reached and exceeded. The alleged liabilities of Purdue and the estate vastly exceed the available insurance here. So those are major distinguishing factors. But even with

those major extinguishing factors -- and the judge decided to stay this for two other reasons. One is he was concerned about the possibility with a few different arbitrations of getting inconsistent results. And secondly, he was concerned about the expense.

And Your Honor, I wanted to focus for a moment on the expense issue. While the counsel has been clear that they are willing to talk about a stay, and Mr. Auslander has indicated that he's willing to discuss something -- I wasn't exactly clear -- with regard to whether or not we wouldn't have to go to as many arbitrations as currently they're seeking, which appears to be a minimum of 16 and potentially more. And the question then becomes, in terms of this Court's management of the estate, and especially the Court's administration of all of the property in the bankruptcy possession, which is a core aspect of any bankruptcy. The expense of our pursuing the adversary proceeding before Your Honor, which no one disagrees will continue, whether it be before Your Honor or whether it be in the district court, which is a motion that has been made but not argued, that motion will go forward. In addition, I don't believe that Purdue -- although, you know, I don't want to make a commitment at this moment -- but the idea that the potential to collect the arbitration funds should be put off until the -- this Court determines the -- how the adversary proceeding

comes out is frankly not attractive, and no one here has committed to be bound by this Court's rulings in this adversary proceeding.

So what we would be -- we would end up with under such a scenario would be that this Court would move forward. The -- potentially -- we believe it's potentially $2 billion of Bermuda form coverage, or close to it. The potential for that coverage could simply stand in obeyance and then a year-plus from now, according to the schedule that we provided, that we agreed to with at least -- with the non-moving insurance companies, there would be no decision in this case until approximately a year or so from -- about a year and a half from now. And all that time, we would not be pursuing the arbitrations.

Then the arbitrations would start, 16 of them, and the amount of money -- let's just talk about how an arbitration -- a London arbitration -- works. You know, London arbitration, all of the insurance company, all of the law firms that are involved here today will likely continue to be involved because these are new -- the policies call for New York law. And in every arbitration that I've been involved in, New York lawyers have been -- you know, they're working on the matter, handling the matter with respect to their New York expertise.

On top of that, you add a layer of London

solicitors. On top of that, you add a barrister, who is the person who actually presents the arbitration. And then on top of that, you add three paid arbitrators. You've got each party paying an arbitrator, and then the parties will split the neutral arbitrator.

So that is an expensive process and, you know -- but it's multiplied now by 16. What we're talking about now is not an insubstantial but a very material cost to the estate where money that could otherwise be going into abatement and having a centralized uniform decision and afford this Court in the adversary proceeding so that all of the insurance issues were decided in one place, as is favored by the bankruptcy court.

So the determination of whether or not to allow the arbitration to go forward or not is a determination as to whether or not the policies and the point of the bankruptcy code of centralizing and maximizing the assets that the -- that the Debtor has are undermined and seriously jeopardized by spreading this out into 16 separate arbitrations.

Your Honor, we submit that it would and that it would not -- that it would do that in a way that would, A, waste estate assets; B, significantly delay the determination because even if we were to go to arbitration tomorrow, the number of arbitrators who are qualified -- and

this is a small world. I don't know that you could get arbitrators who are able to do 16 arbitrations within the next couple of years. I think that there would be a long wait and they would have to be done seriatim because I don't think there are enough people to do these arbitrations.

So then we get, Your Honor, to the consent to settlement issue.

THE COURT: Well, before we --

MR. BREENE: Your Honor --

THE COURT: Before we get there, I frankly don't see a discussion of cost or delay in ResCap or any of the other cases.

What I -- what I do see in some of the cases is a concern that one should not direct arbitration if the very cost of arbitration can't be borne by the estate. For example, if you have an insolvent Chapter 7 estate, it literally has no cash, so it can't pay for an arbitrator, courts will not direct arbitration.

But it seems to me that in ResCap, the Court was totally focused on the fact that it had retained jurisdiction under the plan to determine the primary insurer coverage issues and did not want the excess layers which followed that -- those policies -- to be arbitrated separately with the risk of inconsistent results, and I guess there would be in addition to that inefficiencies.

But I don't -- what's missing on that point here, and maybe you can point it out to me, is whether the litigation that would stay in the bankruptcy court or, if the reference, is withdrawn, in the district court over the policies that don't have arbitration provisions is the same as far as claim or issue preclusion that would be dealt with in the arbitrations.

I mean, it's one thing to say that, as Judge Lane did, that if that is the case, then you should stage these in a way that decides the controlling issue, and then the excess coverage follows along with it. But if they're different policies with different issues, then I'm having a hard time seeing why you wouldn't just proceed with both.

And I think Mr. Koepff was volunteering that the Defendants would basically let the Plaintiffs choose the order of litigation. But, you know, if you determine that they were different policies and different issues, it would seem to me that you would say, well, we're going to go ahead in the bankruptcy court and the district court with the ones that don't have arbitration provisions, and we'll go ahead right away with at least the key ones in the -- in the London arbitration and maybe stage the ones further up the tower to follow, so that, you know, we can set that precedent there.

Am I missing something? I mean, I -- it seems to

me that's a choice the Plaintiffs have, and I certainly see authority for letting them have it, and I think the Defendants do too, which is why they offered that up.

MR. BREENE: Your Honor, let me -- let me try to address the issue preclusion argument first. I mean, I believe that there will be significant overlap in terms of the issues that will be litigated between the non-arbitration-asserting insurance companies and the arbitration-asserting insurance companies.

THE COURT: Is that because -- is that because the policies are essentially the same; they have the same language?

MR. BREENE: They are not -- they are not the same, Your Honor.

THE COURT: Okay.

MR. BREENE: They -- the concepts are very similar, and they're -- the -- while the language is not identical, they -- which is why, frankly, that I don't want to commit that there would be no issue preclusion. I think that we would have to look at that and might be able to argue that. But the -- there is different language but overarching concepts which are similar.

The concept of -- you know, the easiest one is, you know, whether or not the damages were expected or intended from the standpoint of the insured. That would be

an issue in the adversary proceeding with the non-arbitration clause insurance companies, and it will be an issue with respect to the arbitration clause.

Now, so one of the dangers that we have here is this Court could come to some conclusion. I strongly suspect that the arbitration-asserting insurance companies will assert that whatever this Court decides on that issue will not find them in their arbitrations. And as the Court is aware, those arbitration proceedings are confidential. The -- what happens in them, what -- where the panels go with the issues they get will remain secret and will not be disclosed.

So the -- you know, and I believe that was an issue that Judge Lane, you know, was concerned about, the thought that there could be decisions that would be very inconsistent, and that was one of his concerns in terms of staying the arbitrations.

But again, staying the arbitrations while, you know, tentatively offered here by Mr. Koepff, is really to my mind not an attractive option for the purpose of the plan, which is to maximize and, even more importantly, expedite getting dollars into the hands of the abatement trusts. And to the -- so to the extent that we delay and delay and don't even start going through the arbitration-asserting insurance policies until sometime

after this Court decides the non-arbitration, that to me is significantly defeating one of the main points that, as I understand the plan to be attempting to accomplish.

THE COURT: Well, that may be the case. But I'm not aware of any case that really goes off on that grounds to deny the application of an arbitration provision.

MR. BREENE: True enough, Your Honor, but one of the things that I would like to point out is that there is no case like this. I'm not -- I mean, U.S. Lines -- I was trying to figure it out. U.S. Lines did involve 40 years' worth of Club coverage and potentially -- it doesn't go off on this issue and doesn't really address it, but you know, potentially U.S. Lines had multiple -- many multiples of arbitrations that would be faced if the matter were sent to arbitration.

But other than U.S. Lines, I'm simply not aware, Your Honor, of any Court that has been faced with a situation where 16 discrete arbitrations were being contemplated, and the Court said, "That's okay. That doesn't, you know, jeopardize the purpose of the plan. That doesn't threaten the core jurisdiction of this Court." There is no such case. I agree. There's been no such case because none of the cases being cited -- I mean, you know, look at MF Global, which is one of the cases cited by the insurance companies here. That involved one insurance

policy for $15 million with respect to a multibillion-dollar bankruptcy.

The reality is here -- and I know that the -- those who have argued have tried to diminish the potential size of the asset that we're talking about, but the Plaintiffs here, you know, we have -- we've always said that the -- we believe that the potential amount of coverage that could be collected by the estate is in excess of $3.3 billion. We now believe it's closer to $3.9 billion. And if you -- if you look at the various values of what else is being contributed to this estate, while I don't have an exact figure for you, this is a very substantial potential asset of this estate, which we agree -- and we have never taken the position that because it's property of the estate, even because it's a substantial piece of property of the estate, that alone renders it core.

But the other factors that are at play here, and we haven't yet gotten to one that I think is very significant, and that is the consent to settle.

The consent to settlement, which is in, you know, either (indiscernible) which in one way or another is in essentially all of these policies I believe puts at issue the fact that the plan itself purports to settle, Section 5.2 of the fifth amended plan. The plan itself purports to accomplish a settlement of these claims.

And what I think the insurance companies intend to do -- and I've heard absolutely nothing other than, you know, trying to self-peddle the issue that would lead me to -- give me comfort or, frankly, Your Honor, that should give you comfort that in their arbitrations, they will take the position that by accomplishing the settlement that this Court we hope will end up confirming in this plan, the policyholder has violated the policy and somehow avoided coverage.

You know, we don't -- and again, I can't say that they will take that position, but they have certainly not said that they will not take that position. And in fact, when we raised that issue in our opposition, what came back in the reply is what -- sort of a statement that, well, that may all be well and good. Maybe we will. Maybe we won't. But these are confidential arbitrations, so you know, it won't affect anybody else.

So I think that the other aspect that renders this core is that it -- there will be a question in the insurance coverage case as to the actual settlement and actual -- what was actually done in this plan. And to me, the most appropriate case for those coverage issues, which won't go away, Your Honor, just simply because the matter is core and is going to be decided in front of you rather than in front of 16 arbitral panels, but it will be decided by the judge

who oversaw the plan and has intimate knowledge of everything that occurred and an understanding of what occurred and the context of it. And we believe that's where this case belongs.

THE COURT: Well, let me explore that for a minute. I mean, this is something that would come up if it comes up at all, and I think you're probably right, at least some insurer will probably assert it, but it will only happen in the future.

Before it happens, there will have been a ruling on the plan and the request for confirmation of the plan, which will have been on notice to the insurers. And I'm assuming there will be an order that sets forth the Court's findings and conclusions, including with respect to the settlement embodied in the plan. So to me, that's a fact that would be among the facts that would be put in front of the arbitration panel if I permitted the arbitration to go forward.

I'm just not sure beyond that fact what there is to interpret. I mean, it's a fact like other facts, like the facts about the amount of the claims or what year they occurred in, and whether they were occasioned by, you know, directly taking OxyContin or something else. So I'm just -- again, I'm having a hard time seeing why the application of that fact to the policy would be a core bankruptcy

determination. I would've already made the determination, in other words.

MR. BREENE: Right, and the argument that what you did -- what you approved in the bankruptcy is -- has resulted in the voiding of coverage. In my view, that goes directly to the administration of the plan and of the bankrupt estate and renders the matter core.

THE COURT: Well, but --

MR. BREENE: And --

THE COURT: But again, that would be a consequence of the plan, not a determination of what the plan did. It would just be a consequence of it. I mean --

MR. BREENE: I think the -- I think the --

THE COURT: For example, if the plan approves two new tranches of post-confirmation debt to replace the prepetition debt, and one is senior secured and one is junior secured, and the documents laying out the extent of the subordination are attached to the plan and approved by the Court, then later there's a lawsuit between the seniors and the juniors as to whether a particular piece of collateral or a particular portion of the debt really is subordinated: I don't think that dispute would be a core dispute unless it's a dispute as to what the plan actually said. But if it's just a dispute based on the documents, one's looking to enforce a document this way and the other

that way, and the plan just approved the documents, it didn't interpret them, I don't see how that would be a core dispute.

I mean, I would contrast the Netflix case, the Netflix-Relativity Media case, where the Circuit had the view that the plan basically resolved how the streaming would be dealt with, and the rights as between Netflix and Relativity Media, and it was trying to be relitigated elsewhere, and the Court said no, it should be litigated in the bankruptcy court because it was the bankruptcy court's determination. And to the extent it would be interpreted, the bankruptcy court should interpret it.

So I'm not sure how that really is core.

MR. BREENE: Well, Your Honor, isn't that similar to --

THE COURT: I mean, clearly it's an issue that would potentially have some aspects determined by the confirmation order. But again, to me that's just a fact. Unless people are saying you have to interpret that order, then I think you start a lawsuit here as to how it would be interpreted.

MR. BREENE: Your Honor, I think what's going -- you know, again, I guess I -- my view on that is that the -- part of the findings in the plan will be the fairness and

reasonableness of the settlement. And what I think we're arguing here is that those functions of this Court in approving that plan are going to be directly challenged by the arbitrations, and the better place for the determinations to be made as to whether or not there are any -- there is any value in those claims and in those potential defenses is before this Court. We believe it goes to this Court's specific jurisdiction, and that's why this Court should exercise its discretion in retaining that jurisdiction.

THE COURT: Okay.

MR. BREENE: Your Honor, one other point to be -- to be made here is, again -- and it does go to the wastefulness of sending this out to 16 separate arbitrations -- and that is that -- what we've determined is that of the -- of the counsel representation the arbitration-asserting insurance companies, 13 out of the 16 are involved in and representing groups that do not have arbitration provisions.

So what we're going to have is essentially the same lawyers doing the adversary proceeding before this Court as well as 16 additional separate arbitrations. In our view, this is a massive waste of the state's assets. And again, I already went through what those costs could be, but we believe it could be tens upon tens of millions of dollars. It is not some insignificant amount or trivial

amount. That is additional costs that could be (indiscernible) on, you know, going to abatement trusts or the other purposes of the plan.

Your Honor, I think we've gone through the basic arguments there. Just if I -- if I could, just with respect to the argument with respect to the three other -- the three policies that we believe do not contain arbitration clauses that could be effective here.

First, and I'll go through the argument very quickly, Your Honor. As an initial matter, the one Second Circuit case relied upon by the insurance companies as Montauk Oil. Now, in Montauk Oil, the issue with -- in all these cases is that there's an arbitration clause which says you go to arbitration. But then there is a service-of-suit clause that says that the debtor or the policyholder can bring suit, and the insurance company will consent to the jurisdiction in any jurisdiction in the U.S. So those are in conflict. And, you know, there are various ways that you can read them.

But in the Montauk case, and in several of the other cases cited by the insurance companies in this instance, there was an additional clause and it said the New York suable clause does not vitiate its contractual right to arbitrate given its clear statement that it shall not change the contractual or other substantive rights and obligations

of the association or of the member.

So there was a saving clause there that basically said it's not changing the duty to arbitrate, and that's exactly what that Montauk case decided on. The other district court cases I think had very similar language.

There is no similar language in this case. They don't have the saving language, so you're left with two arguably inconsistent provisions, but we believe the decision in (indiscernible) was the right one that you can reconcile them by basically saying, yes, there's the right to arbitration, but then the policyholder itself has a unilateral right to bring an action in the U.S. on the same matter.

And the couple of cases that were cited where the way that the Courts tried to reconcile to was to say, yes, well, they consent to service of suit, but only with respect to an award that has been issued by the arbitration panel. Well, Your Honor, that language doesn't exist. So what those courts have done is read into the policy an additional provision which, you know, they can't really do to make a contract that's better than the one that the insurance companies had sold. So that's that issue.

The next issue, Your Honor, I think with respect to the narrow arbitration provision for AIG that it -- that it deals with interpretation of policies. Well, Your Honor,

we freely admit and we did admit that, you know, any dispute here is going to be a mixed question. There will be interpretation issues. There will be factual disputes. But what was agreed to be submitted were only the interpretation issues, so if we read that arbitration clause, it -- and I think Counsel had agreed, there were arbitration -- there were -- while there will be interpretation issues, they don't -- we have not agreed to arbitrate factual issues. So given that dichotomy, we don't believe that that particular arbitration clause is broad enough to send the matter to arbitration.

And finally, Your Honor, with respect to the Evanston policy, it is simply unclear as to what policy -- the Evanston policy says that it follows form to AISLIC/Munich, and we did identify the Munich policy that was there, and the Munich policy does not contain an arbitration clause, so there -- we do not believe there's an operable arbitration clause in the Evanston policy, and we think that the Court should (indiscernible).

THE COURT: Well, let me make sure I have the record on this. The Evanston policy language that says it follows the form you say identifies a specific AIG policy?

MR. BREENE: It does not, Your Honor. It doesn't -- if it referred to a specific AIG policy -- I believe the language that's in there -- that's in the -- let me just

find it. All it says, Your Honor is "AIG/Munich American." Well, those are two different policies. The policy period that is given is somewhat different than the policy period of the AISLIC policy. So the policy period that's given in the policy for the -- for the policy to which it follows form 7-1-2000 to 10-1-2003. The AISLIC policy in fact is -- the policy period is 10-1-2000 to 10-2-2003, you know, not vastly different but different enough that there certainly is a question as to whether it's the AIG policy, and the Munich-American policy doesn't have an arbitration provision.

THE COURT: Well, that -- I guess that's my question. Do I have that policy somewhere in the record?

MR. BREENE: I believe we do, Your Honor, but I'm just going to check that out.

THE COURT: Ms. Green, can you -- do you -- is that policy in the record?

MS. GREEN: Yes, Your Honor. I can answer that. It's not unclear. Counsel says it's unclear which policy it follows. There is no Munich policy. I'm not aware of one. I have never seen one, and there was never one put into the -- into the record by counsel for the Plaintiffs.

MR. BREENE: Your Honor, there -- it's actually the -- I believe it's actually the Gulf policy, Your Honor. I think Munich was the reinsurer is my understanding.

THE COURT: Well, do I have -- do I have it in the record, whatever it is? I mean, I think I have the AIG one, right? That's the one that has the arbitration provision.

MR. BREENE: Your Honor, I believe it's in the record, but I'm just trying to check here because I don't want to represent if I'm not certain.

THE COURT: Okay.

MS. GREEN: And I can represent that the AIG/AISLIC policy is in the record. We put it in. And there is no Munich policy to which Plaintiffs refer.

THE COURT: Okay.

MR. BREENE: Yeah. Your Honor, it's the Gulf policy, and it is in the record. The Munich policy referred to in the AIG policy, they were simply referring to the -- let me see if I can get the actual document number. It's the Gulf policy that we -- the quote is to what's actually in the Evanston policy, but let's see. If you -- if you take a look at Exhibit A, schedule of Debtor's insurance policies to the complaint. And it is Document 1, and there's a -- there's a listing of all the policies, and it's the Gulf underwriter's policy for 10-1-2002 to 10-1-2003.

THE COURT: But how do I get to Gulf Underwriters from AIG/Munich-American.

MR. BREENE: Your Honor, it's my -- my understanding is that -- again, that was what was written on

the policy, and Gulf was -- my best understanding, Gulf was the paper that was ultimately issued, but the -- but it was -- but it was reinsured by Munich-American. That's why there's a little bit of a confusion. And AIG and Gulf shared that umbrella layer in a 50-50, so they shared the layer. There were two policies there, and the question is which one did the Evanston policy follow form to? It's got both.

MS. GREEN: Your Honor, may I say something to clarify the record, please?

THE COURT: Well, I just -- you can in a second. I just had a question. So Munich-American was the reinsurance for the Gulf policy?

MR. BREENE: That is my understanding, Your Honor.

THE COURT: And Evanston is a layer above that?

MR. BREENE: Evanston's above that.

THE COURT: So --

MR. BREENE: But the policy -- the policy to which it refers ultimately is -- we believe is the Gulf policy.

THE COURT: Well, but the -- but we don't have the Munich-American one?

MR. BREENE: No, the Gulf -- the Munich-American one is the reinsurance. It's not the -- it's not the paper that was ultimately issued that -- even though it's referred to in the Evanston policy, sometimes those things will

change. And what ultimately was issued in terms of the actual paper that -- and the company that issued the policy was the Gulf Insurance Company.

THE COURT: Well, I know there's a list of the policies, but do I actually have the policy that has the absent arbitration provision -- that doesn't have an arbitration provision, I mean?

MR. BREENE: I'm going to go through. I believe that you do, Your Honor. Let me -- let me find it.

THE COURT: Right. I think we may just have excerpts that quote the arbitration provisions. In any event, Ms. Green, you were going to say something, and I wanted to get my questions answered.

MR. BREENE: Your Honor, I do not believe the Gulf policy is an exhibit.

THE COURT: Okay. All right. So Ms. Green, you were going to say something?

MS. GREEN: Yes. I think it's important to clarify a couple of things. First of all, Counsel identified a Gulf policy which it says controls. None of this was put into the record as evidence in support of Plaintiffs' opposition.

In addition, you know, the assertion by Plaintiffs' counsel that the Gulf policy period identified in the complaint or the exhibit to the complaint is a period

from 2002 to 2003 is significant in that the Evanston policy terminated in October of 2001, and therefore it could not possibly follow form to a policy period that incepted after it terminated.

MR. BREENE: Your Honor, with respect to that, I think there is a disagreement between Plaintiff and Evanston as to whether or not that policy ended. I think that's one of the issues in the litigation.

THE COURT: Okay.

MR. BREENE: Your Honor, if you have no further questions for me, I don't think I have anything further on this.

THE COURT: Okay. Fine. I'm happy to hear a brief response to the -- to those arguments.

MR. BREENE: And Your Honor, just as a last point, if the Court would like, we of course are willing to submit the policy if the Court would like to see that policy.

THE COURT: Okay. Actually, before we -- before we get to the Defendant's responses, let me just deal with the issue of the facts and interpretation being intertwined.

Do you believe that you can in an order provide -- or I in an order can provide that the arbitration in respect of the three policies that have the interpretation arbitration provision would be confined to issues of pure interpretation and/or agreed facts as applied to those

issues or uncontested facts? That's a question for Mr. Breene.

MR. BREENE: Yeah. I realize it's a question for me. I'm thinking about whether I can answer it. I -- it may be possible. I don't believe I've ever seen it, but I think, again, getting back to the -- where we are in the context of this bankruptcy estate, while it would arguably -- the Court I guess would -- you would feel that the Court is providing enforcement of the arbitration provision as written.

It would by the same token essentially double the work and the expense. We'd end up doing an arbitration to determine -- I don't know that there would be agreed-upon facts. I mean, certainly parties -- the Court could direct the party to try to work toward agreed-upon facts. And there could, I guess, be an interpretation -- pure interpretation based upon agreed-upon facts if we could come to some landing on that. I do think that there will likely be some disputed facts. And to the extent that there are, such a, you know, solution, frankly, may be more difficult than not.

THE COURT: Well, I mean, you could also say that it'll be limited to -- without any fact finding except just the interpretation of the agreement. That would be a fairly short arbitration, I would think, because you would have --

it would basically be a summary judgment type of determination or judgment on the pleadings determination. And the parties of course would be free to say no, we'll go farther, if they want to. And --

MR. BREENE: I think at the -- I think then at the end of the day, you'd come in with an interpretation in a vacuum, and given -- what typically would happen here is then there would likely -- even though we've got an interpretation mandated by an arbitral panel, we may very well end up in an additional litigation over how those facts apply to that interpretation.

THE COURT: Okay. Although, Mr. Auslander will say, well, if that's the case, then that highlights why the courts are generally inclined to have an arbitration of mixed law and fact being included in these types of arbitrations.

Okay. So why don't I -- why don't I hear any response to these arguments?

MR. AUSLANDER: Yes. Thank you, Your Honor. This is Mitchell Auslander again, and that is exactly what I would say, although I couldn't say it any better.

I do agree with Mr. Breene that it would be very difficult if not impossible to come up with an agreed set of facts, and I don't know that it is possible to have an arbitration just on contract interpretation issues when we

have difficult other issues in the context of opioids, such as what is an occurrence? What happens? I don't think you can say what is an occurrence without understanding what happens, so I think it is a mixed question.

But coming back to a question you asked Mr. Breene, you asked him if the forms of the non-arbitration insurers, the insurance policy forms, are the same as the arbitration policies forms, and they are -- they're not. Mr. Breene answered with a common issue that might be -- might be handled in both -- under both policies, but the forms are quite different. The Bermuda forms have integrated occurrence provisions and (indiscernible) contracts do not contain those provisions.

In my client's case in particular, one of our arbitration forms has a provision that says that you don't have coverage if you -- if you declare an integrated occurrence and you continue to sell the product anyway. That is -- that's relatively unique to that form. That is not present in the non-arbitration provisions, and it actually goes on, but the answer is they're different.

Mr. Breene kept saying there will be 16 arbitrations. I couldn't say with any certainty that there won't be 16 arbitrations, but I can say with a very high degree of probability that there are not going to be 16 arbitrations. That's just not the way these cases work out,

as I indicated before.

And we're going to -- we will work through if they want to go forward with their arbitrations, but we'll be (indiscernible) in some way that makes sense to all the parties, and at some point it will stop because it will become clear what the results are. So I think the 16 arbitrations is really a bogey and doesn't really come into play here as a practical matter.

And the last thing I would point out is the -- Mr. Breene made a point that there's so much insurance here that that should matter. I've already explained why that is not the case under the law, but there are in fact cases where there's a lot of insurance involved, and they're not deemed to be core. The Roman Catholic Diocese case, which involved insurance coverage for sexual abuse cases, I don't know how much insurance it was, but it would have been a lot.

THE COURT: Right, although that wasn't an arbitration case. That was just a core versus non-core case.

MR. AUSLANDER: That's true, and it was not core even though there was all of this insurance that was argued to be so important to the -- to the (indiscernible).

THE COURT: Right. On the other hand, I could -- I could see a court -- if the insurance issues were fundamental to negotiating a plan and parceling out the

Debtor's assets, staying the arbitration so that they could be dealt with in connection with the plan process, but the next thing you're going to tell me is that's not the case here.

MR. AUSLANDER: Thank you, Your Honor. That's (indiscernible).

MR. BREENE: Your Honor, if I could respond very, very briefly to one point. You know, Mr. Auslander and also Mr. Koepff have suggested that the way this could work is you could start with the lower level and work your way up, and maybe you only have to have one, or two, or three arbitrations, and then everybody would say which way the wind was blowing. But Your Honor, that has never been our experience.

And in fact, these are -- these are secret results. No one's allowed to discuss what occurs in any particular arbitration. They're non-precedential, so even if there were a loss or a win in front of one arbitration panel, that will have no precedential value whatsoever over the next arbitral panel. So the idea that, you know, "this is not such a big problem. It'll be, you know, taken care of," that is not our experience, and I don't hear anyone committing to it simply suggesting maybe this is the way it could work. It hasn't worked that way in our experience in the past, and because no arbitral panel will know what the

other arbitral panel decided on any of these issues, it will be Groundhog Day all over again, every time, over those 16 arbitrations.

MR. KOEPFF: Your Honor, this is Paul Koepff. Could I have two minutes to say a few things in reply, Your Honor?

THE COURT: Okay.

MR. KOEPFF: In ResCap, the third layer, the Bermuda layer, was definitely implicated -- it was still implicated. Our attachment point was 300 billion. The amount at stake was over 300 billion, and that didn't even count impairment of underlying limits.

Number two, I thought I was being helpful to Purdue and the creditors committee by offering a stay. In ResCap, the plaintiffs wanted a stay because they wanted to focus on the litigation in the bankruptcy court before the domestic insurers. If Purdue doesn't want a stay, that's their choice. We would actually agree with what Mr. Auslander suggested. Stay, and let's talk about what makes sense. There are ways to coordinate this. We all talk. And I can say that arbitration insurers have worked really well together as a group, so we are prepared to make that commitment. We're prepared to talk about that if and when Mr. Breene wants to.

Your Honor mentioned this thing about rulings that

you would render, and that would be a fact, and you had an engaging colloquy with Mr. Breene about that. We do these Bermuda form arbitrations, London, all the time. And what happens is we treat rulings by a bankruptcy court or some other court as a fact. We don't go to the tribunal and say, "Well, Judge Drain did this ruling, but he -- it should be revised." No. I said before, as we did in ResCap and I say here the arbitration insurers are committing not to relitigate a revised -- seek to revise your rulings in the bankruptcy court. Those are facts that we take as are the facts.

The last point I want to make is in the Second Circuit and in this court, traditional coverage actions are deemed non-core. That's the general rule. Traditional coverage actions are non-core. That's what Judge Glenn said, MF Global; what Judge Lane said; I believe that was also said by the U.S. Lines at Second Circuit. That's what we have here, a traditional coverage action that's non-core. And if it's non-core, the courts have said -- the same courts have said there's no discretion here. You have to order a stay in favor of arbitration.

Thank you.

MR. CALHOUN: Your Honor, this is George Calhoun for Ironshore. May I have a couple of minutes, please?

THE COURT: Okay.

MR. CALHOUN: I would respond --

THE COURT: Could you state the client's name again? It went by pretty quickly, for the court reporter?

MR. CALHOUN: Sure. It's Ironshore Specialty Insurance Company.

THE COURT: Right.

MR. CALHOUN: We're one of the insurers that the service-of-suit argument applied to. And I wanted to point out, Your Honor, onto that issue particularly that the Second Circuit's decision in Montauk came down in 1996, which is four years before these policies were issued. And Montauk said that when you have a service-of-suit provision and an arbitration provision, that they should be interpreted to harmonize them, not to make them in conflict.

Mr. Breene's argument says they're in conflict, and therefore we should get to pick, which is exactly opposite what the law was when these policies were -- and continues to be when these policies were issued.

I'd also point out for Ironshore, we already have an arbitration pending, so they're not saying we get to pick. They're saying we get to disregard a pending arbitration in our case, which is a significant fact with respect to that.

THE COURT: But I think Mr. Breene was making another point, which was that he says that in Montauk, there

was a separate reference to arbitration that basically made it easy to harmonize the arbitration provisions, plural, as opposed to just the one arbitration provision and the -- and the service-of-suit provision. Do you have a response on that?

MR. CALHOUN: As a rule of contractual interpretation, you're always obligated to harmonize provisions. And both Montauk and the other cases that were cited in the brief said the way that you do it is the way that we're suggesting. And all that they have to the contrary are two old, out-of-district cases that have been rejected by the courts in this district, so I just don't think there's much there.

The other point I wanted to make, Your Honor, is on this point about the determinations here that might be made in connection with confirmation being significant facts down the road, what they're really saying is (indiscernible) predetermined, Your Honor. We want you to litigate as part of confirmation what the downstream impacts of confirmation will be. Either that's part of the declaratory judgment they're seeking and that's the adversary proceeding, or they're saying determine in advance what the preclusive effect of the plan is or what the impact of those facts are.

And that's not something you get to do. The Second Circuit's been very clear, and I can cite Your Honor

to Covanta Onondaga Limited versus Onondaga County Resources 318 F. 3d 392. First Court doesn't get to say what the preclusive effects of its own judgment are. That's for the later court.

We're not saying -- as Mr. Koepff said, we're not relitigating anything, but facts will be the facts, including whatever you do at confirmation, but they don't get -- they also don't get to prejudge the adversary proceeding as part of confirmation.

MR. BREENE: Your Honor, if I can have just a couple of mounts to respond to a couple of different things.

THE COURT: Okay.

MR. BREENE: First, Your Honor, you know, with regard to Mr. Koepff's, you know, generous offer of a stay, I'm not -- you know, I'm not in a position to say yes or no today. I mean, I don't think at the end of the day that is the interest of the estate, and more specifically I don't think it's in the interest of the abatement trust. But I am not taking a position one way or the other today as to whether or not Purdue thinks that's a good idea or a bad idea. I want to make that clear.

Number two, Your Honor, Mr. Koepff very interestingly said that in handling an arbitration in London or Bermuda, the rulings of this court will be taken as fact. Well, yes. They are facts, and they will be taken as fact.

What he did not say is that they will be binding law. And clearly, they will not take the position that they are going to be binding law. And in fact, Your Honor, the fact that right now -- and it's actually sort of not part of my responsibilities in this matter, but I'm very well aware that the insurance companies and the Debtor are very -- in very serious negotiations as we speak relating to insurance neutrality, and in fact that the insurance companies have moved to appoint an expert to testify at the confirmation hearing on insurance neutrality.

And I would just point out, Your Honor, without going into it at great length that to the extent they're arguing for neutrality, they're obviously -- in my view and I think in anybody else's view -- arguing that whatever this Court decides in this matter can't bind them.

Finally, Your Honor, we respect to Mr. Calhoun's argument and your rejoinder with respect to the fact that the Second Circuit Montauk case came down a few years before the policies at issue here were written, I think that that's a very important concession. And the policies that were written and are at issue here, as I indicated to you, do not have the saving language that the policy in Montauk had.

And in the Second Circuit, Your Honor, in Pan American World Airways virus Aetna Casualty 505 F.2d 989 (indiscernible) 1001 (1974), the Second Circuit has held

that in the event that there is policy language that would fix a problem or an ambiguity that is available in the marketplace at the time that the policy is issued and the insurance company fails to incorporate it into its policy, it can be presumed that they didn't intend to and that they knew about the language that -- the language frankly quoted in Montauk that would have gave them -- given them -- given them the result that they seek.

Thank you, Your Honor.

THE COURT: Okay. Actually I had one other question that's unrelated to the argument that's been going on since the start of this hearing, which is are the Plaintiffs pursuing the -- today -- the New York Insurance Law Section 1213 point?

MR. BREENE: Your Honor, no. I don't think we are.

THE COURT: All right. And that's because it's a Connecticut point?

MR. BREENE: Well, there is -- there is one plaintiff that is -- that is in fact in New York entity, but I think we are not pursuing that at this time.

THE COURT: Okay. All right. Thanks.

All right. I'm going to take about a 10-minute break and then come back and give you my ruling on this set of issues. And then we can see what, if anything, is left

on today's agenda following that ruling.

So don't hang up. You can put your screen on blank. You can put yourself on mute, but don't hang up the phone.

(Recess)

THE COURT: Okay. Good afternoon. We're back on the record in In re Purdue Pharma LP, and more specifically Purdue Pharma LP, et al. versus AIG Specialty Insurance Company, et al.

I have before me a motion by numerous insurance carrier defendants for an order staying this adversary proceeding in the light of either currently pending or to-be-commenced arbitration proceedings under the parties' contracts.

Arbitration is favored under the Federal Arbitration Act in the federal courts, and the burden clearly lies with the party opposing arbitration to show a reason why it should not go forward and instead why litigation that would contravene an arbitration provision should not be stayed. See for example, Resco Holdings LLC. v. National Union Fire Insurance Company of Pittsburg PA, 2019 WL 6334733, *1 (S.D.N.Y Oct. 30, 2019).

Of course, this adversary proceeding is brought in a bankruptcy case, and it has been long recognized that disputes that involve both the Bankruptcy Code and the

Arbitration Act often present conflicts of near polar extremes, and the Second Circuit has recognized that a bankruptcy court has discretion in the light of those extremes to decline to compel arbitration when a conflict exists between the Bankruptcy Code, which favors centralization of disputes concerning a debtor's estate and the Federal Arbitration Act, which advocates a decentralized approach to dispute resolution.

See, among other cases, MBNA America Bank v. Hill, 436 F.3d 104, 108 (2nd Cir. 2006); Crysen/Montenay Energy Company v. Shell Royal Company (In re Crysen/Montenay Energy Company), 226 F.3d 160, 165 (2d Cir. 2000); and Drennen v. Certain Underwriters at Lloyds of London (In re Residential Capital LLC), 563 B.R. 756, 768 (Bankr. S.D.N.Y. 2016).

The reconciliation of the two statutes as applied to particular facts is now the subject of extensive caselaw, which provides guidance to the Court in respect of the present motion. That guidance comes from a number of circuit-level cases as well as a number of cases at the district and bankruptcy court level.

"In deciding whether to compel arbitration in a bankruptcy context, courts apply a two-part test. First the Court must determine whether the proceeding at issue is core or non-core. If the proceeding is non-core, generally the bankruptcy court must stay the proceeding in favor of

arbitration, as non-core proceedings usually do not warrant overriding the presumption in favor of arbitration. Second, if the proceedings are core, the Court must consider whether enforcing the arbitration provisions would seriously jeopardize any underlying purpose of the Bankruptcy Code. This two-part test presents mixed questions of law and fact, and on review the appellate courts accept the bankruptcy court's factual findings unless they're clearly erroneous and review as conclusions of law de novo." In re Lehman Brothers Holdings 663 Fed. App'x 65, 67 (2d Cir. October 6, 2016) (internal citations in quotations omitted.)

In applying that directive, the courts generally engage in a four-step process. First, the Court must determine whether the parties agreed to arbitrate the particular dispute.

Second, the Court must determine the scope of that agreement.

Third, if federal statutory claims are asserted, it must consider whether Congress intended those claims to be non-arbitrable.

And fourth, if the Court concludes that some but not all of the claims in the case are arbitrable, it must then decide whether to stay the balance of the proceedings pending arbitration. See In re MF Global Holdings Limited, 571 B.R. 80, 89 (Bankr. S.D.N.Y. 2017), citing Bethlehem

Steel Corp. v. Moran Towing Corp. (In Re Bethlehem Steel Corp.) 390 B.R. 784, 789 (Bankr. S.D.N.Y. 2008). See also In re Residential Capital LLC, 563 B.R. at 767.

Certain of those factors are not present here. For example, there is no specific federal statutory claim asserted here that would conflict with the right to arbitration, unlike, for example, the violation of discharge claims in Credit One Financial v. Anderson (in re Anderson) and Belton v. GE Capital (In re Belton), as decided by the Second Circuit.

Here, it's probably worth noting the qualifying language in the Lehman Brothers Holdings quote that I read, namely the Court must consider whether the proceeding is core or non-core, and “generally” the bankruptcy court must stay proceedings in favor of arbitration if they are non-core, and the notion, going back to In re U.S. Lines Inc. 197 F.3d 631, 640 (2d Cir. 1999), that the conflict between the policies of the Bankruptcy Code and the Federal Arbitration Act may in certain circumstances require the finding that a matter is core that would not in other contexts be core, given its major impact on the Chapter 11 case.

On the flipside, as Judge Glenn noted in the MF Global case, certain matters may be procedurally core or not materially core, and, therefore, not warrant staying

arbitration, but instead would warrant staying the underlying matter before the bankruptcy court given the Circuit's directive, which is a consistent one, that only if arbitration would severely conflict with the text, history, and purposes of the Bankruptcy Code should the bankruptcy court have discretion to compel or to stay the arbitration.

Here, again applying the four-part analysis, it's undisputed that the vast majority of the policies at issue contain what the courts generally recognize as a broad arbitration clause; i.e., 14 of the 16 arbitration provisions provide for arbitration with regard to “any dispute arising under or relating to the policy,” which would, in my view, cover the disputes raised in the underlying complaint in this adversary proceeding. Again see In re: Residential Capital, LLC, 563 B.R. at 769, quoting JLM Industries, Inc. v. Stolt-Nielsen, S.A., 387 F.3d 163, 167 (2d Cir. 2004). See also In re Cordali, 2010 WL 4791801, at *6 (Bankr. S.D.N.Y. Nov. 18, 2010).

It is asserted that two of the other policies have a more narrow arbitration provision that would not apply to the underlying dispute here, that is, with regard to the AIG Specialty Insurance Company policy and Evanston Insurance policy, as well as the Ironshore policy, each of which provide for arbitration in the event of a disagreement as to the “interpretation” of the policy.

Those provision -- those types of limiting language provisions are construed more narrowly and permit an arbitration only obviously within the scope of such a policy, and not with respect to the determination of factual issues exclusively. See, for example, United Parcel Service v. Lexington Insurance Group, 2013 WL 1897777 at *3 (S.D.N.Y. May 7, 2013).

However, mixed questions of interpretation and factual application in the light of that interpretation, generally fall within the scope of such a provision, unlike the case that I just cited where the only issue to be decided was a factual issue, the interpretation of the policy not being in dispute. See, for example, WESCO Holdings, LLC v. National Union Fire Insurance Company of Pittsburgh, 2019 WL 6334733 at *1.

So I conclude that the policies at issue do, in fact, provide for arbitration here with regard to the complaint, which is, with regard to the three policies subject to a more narrow arbitration provision, nevertheless one that seeks declaratory relief in broad brush, not only as to the facts at issue, i.e., the underlying types of claims that might be subject to the policy, but also the interpretation of the policies themselves and their specific terms as to, for example, “bodily injury” and the like.

The second factor here, as I stated, doesn't

directly apply. There's no specific provision of the Bankruptcy Code that is implicated in this dispute, which is fundamentally a contract dispute, whereby the plaintiffs are looking to augment their estates by seeking a declaration that their rights under the various policies at issue entitle payment of substantial amounts of insurance coverage.

Nevertheless, the plaintiffs argue that fundamental policies embodied in the Bankruptcy Code require that this litigation is not stayed in favor of arbitration.

As I noted, the law in this area has developed over the last 20 years considerably, starting with the two seminal cases that I've already cited, United States Lines and MBNA America Bank v. Hill. As stated in MBNA America Bank, "Bankruptcy courts are more likely to have discretion to refuse to compel arbitration of core bankruptcy matters which implicate 'more pressing bankruptcy concerns.' However, as to core proceedings, the bankruptcy court will not have discretion to override an arbitration agreement unless it finds that the proceedings are based on provisions of the Bankruptcy Code that inherently conflict with the Arbitration Act or that arbitration of the claim would necessarily jeopardize the objective of the Bankruptcy Code. "This determination requires a particularized inquiry into the nature of the claim and the facts of the specific

bankruptcy. The objectives of the Bankruptcy Code relevant to this inquiry include the goal of centralized resolution of purely bankruptcy issues, the need to protect creditors and reorganizing debtors from piecemeal litigation, and the undisputed power of a bankruptcy court to enforce its own orders. "If a severe conflict is found, then the court can properly conclude that with respect to the particular Code provision involved, Congress intended to override the Arbitration Act's general policy favoring the enforcement of arbitration agreements." 436 F.3d at 108. Here -- I'm sorry, internal citations and quotations omitted, including as to the U.S. Lines case at multiple points in that quote.

Here, the plaintiffs assert that the competing interests favor strongly litigation of the complaint in the bankruptcy court or the district court presiding over the bankruptcy case rather than in an arbitration, based on the following assertions that the issues raised in the complaint will not all be subject to arbitration provisions, i.e., there are multiple defendants who do not have the benefit of an arbitration provision, and therefore splitting the determination of the claims in the complaint with having the arbitrable claims decided by arbitration panels would both be wasteful and lead potentially to inconsistent rulings.

It is also alleged that the mere staying of this

litigation as to the defendants with arbitration provisions would lead to undue cost and delay. Finally, it is alleged that the staying of the complaint would "disrupt confirmation of the plan, would interfere with the mechanics of plan implementation, and would prolong the wait for distributions to estate creditors." That's found at Page 3 of the plaintiffs' memorandum in opposition to the motion.

In further support of that latter point, the defendants [sic] assert that it was a fundamental element of the plan before the Court that the plaintiffs in this adversary proceeding be agreed and agree on the pursuit of the adversary proceeding for the benefit of the parties who would receive insurance proceeds, if obtained through the adversary proceeding under the plan.

It is also asserted that this Court should decide at least two of the potential defenses that would be raised in arbitrations because of their nexus to the bankruptcy case.

The first is a defense that is anticipated to be raised by various insurers who have the benefit of arbitration provision, namely, that they would need to consent, or at least have the opportunity in a period of time to consent, to the settlements of the underlying insured claims which, it is contended, has not occurred here and will not occur here.

The plaintiffs allege that the plan and its confirmation might well affect the determination of that issue, and, therefore, the Court, having presumably, in their mind, confirmed a plan, would need to retain jurisdiction over that defense since it would involve a review of the circumstances under which the plan was confirmed and the Court's order confirming the plan.

Secondly, the plaintiffs allege that certain of the insurance policies at issue have a so-called pay-first provision, i.e., liability under the policies whether specifically denominated as payable only in these circumstances or, by their wording, provide for reimbursement, require first a payment of the underlying claim against the debtors before the insurance kicks in to reimburse that obligation. It is alleged that the plan would be jeopardized or performance of the plan would be jeopardized if payments under it were made to claimants before a determination that the underlying claims were, in fact, subject to insurance coverage.

The movant insurers contend that the foregoing arguments are, in fact, insufficient to establish the type of fundamental inherent conflict under the caselaw that would prevent the staying of the adversary proceeding. I conclude, based on my review of the parties' pleadings, including the exhibits, but primarily the caselaw that they

have cited and our own research, that the movants have the better of this argument.

First, under the present circumstances, I believe that the claims in the adversary proceeding against the moving insurers would not be viewed as core on a "fundamental" core basis under the caselaw. I say this notwithstanding In re U.S. Lines, Inc., 197 F.3d 631, where claims against insurers who insured against personal injury were held by the Circuit to be core in the context of an arbitration determination because I believe the facts of that case are different than the facts here, and, as I noted earlier, the Circuit has never had a non-fact-based determination of what is core or "fundamentally" core.

The insurance dispute here, while clearly important in the context of this -- of these Chapter 11 cases, is not so fundamentally important as to warrant its centralization in one court presiding over the bankruptcy cases. I say this for a number of reasons.

The first is the context in which it arises. It neither arises at the beginning of the case, at which time the parties would all be grappling on the nature of those insurance rights to determine how fundamentally important they are in the overall context of the parties', and, ultimately, the Court's determination on how the assets and liabilities of the debtors should be resolved.

Rather, they come up in the present context, years after -- over a year after the case, the bankruptcy case, that is, was filed and where I have a pending plan that allocates insurance coverage but does not do so in a way that makes the confirmation of the plan contingent upon answering the scope of that coverage.

Instead, the plan provides for a personal injury class that is to receive four substantial cash distributions regardless of insurance that is available or determined to be available, $300 million on the plan's effective date and then $200 million, $100 million, and $100 million of cash on anniversaries of the effective date, through July 30th, 2026.

In addition, another $50 million of cash will be paid to the claimants in that cashe from the proceeds of available insurance, i.e., if the debtors are successful or the plaintiffs are successful in obtaining recoveries from the insurers for personal injury claims. And when I say $50 million, it's up to $50 million, i.e., the first $50 million or less is obtained, the amount that's obtained.

The remaining amount would go to other trusts under the plan which have negotiated that plan, I believe, on the understanding that they will take the risk as to whether there is more insurance coverage, and have agreed to the cash payments or would agree if the plan were confirmed,

regardless of insurance coverage.

That is, the determination of insurance coverage is not necessary, either to the negotiation of the plan or to confirmation of it, or, as was the case in the U.S. Lines decision, to the equitable implementation of the plan.

In that case, the plan had already been confirmed. There were pay-first policies there. Indeed, it was the case that all of the policies were pay-first policies -- although, frankly, I don't think the fact that they were all pay-first policies was dispositive -- and the Court found in that context that it would be inequitable to make the distributions under the plan of cash before determining the rights in the policies, that that was not a bargain that the creditors had made. It was that “mutual reinforcement” that was the tie to the plan provisions and the pay-first contractual provisions that I believe is here lacking. See Mt. McKinley Insurance Company v. Corning, Inc., 398 F.3d 436, 448 (2d Cir. 2005).

It is also the case that the Circuit found in U.S. Lines that the insurance rights were all or substantially all of the assets of the particular debtors that were bringing the litigation against the insurers.

Other courts, when faced with a motion either to stay arbitration or an objection to a motion to stay

litigation in favor of arbitration, or simply a motion to withdraw the reference where they're determining whether a matter is core or not for purposes of withdrawing the reference, have latched onto that latter point in distinguishing their facts from U.S. Lines, i.e., noted that in their cases, the insurance at issue was not the sole asset or even necessarily the primary asset of the Debtors estate.See Roman Catholic Archdiocese of Rockville Centre, New York v. Arrowood Indemnity Company, 2021 U.S. District Lexis 94233 at *13-18 (S.D.N.Y. May 17, 2021). See also the Residential Capital and MF Global cases that I previously cited, as well as Dewitt Rehab and Nursing Center v. Columbia Casualty Company, 464 B.R. 587 (S.D.N.Y. 2012); In re Quigley Company, 361 B.R. 723 (Bankr. S.D.N.Y. 2007); and In re Durr Mechanical Construction, Inc., 2021 Bankruptcy Lexis 1607 (Bankr. S.D.N.Y. June 16, 2021). In the context of not a motion to withdraw the reference but a motion to either stay pending litigation or, alternatively, to stay arbitration in favor of pending litigation, again, I believe the core/non-core distinction can be broadened, based on the context, as the court did, I think, in U.S. Lines. But the key point is that here, while very important, the proceeds at issue of the insurance (which are asserted anywhere, depending on who is talking with regard to these arbitrations, would be between a billion dollars and $3.9

billion) would not constitute even the primary asset of the debtors' estates; but more importantly, again, this dispute is not determinative or dispositive of the plan confirmation process, either the negotiation of the plan or confirmation of the plan itself.

That leaves the issue, or the two issues specifically raised by the plaintiffs, namely the potential defenses that could be raised by the defendants in arbitration ostensibly to override or contradict the rulings of this Court. They would go to, again, the pay-first provisions in some of the agreements and the “consent to settlement” provisions in the agreements.

As to the consent to settlement provision, it appears to me that it is likely -- although I'm predicting the future -- that if I confirm the plan, there will be aspects of that ruling that will address the propriety of the settlements at issue and their effect on the insurers. I am aware, based on the record of the disclosure statement hearing, for example, in this case, that one issue for confirmation is the so-called insurance-neutral aspect of the plan and the insurers’ contention that the plan is not insurance-neutral but would determine some of their rights.

It would appear to me that my rulings would all be facts that would be before an arbitration panel, and the movants have contended that -- not contended, have assured

the Court, and I am relying in part upon this assurance, that they would not challenge this Court's rulings and seek to relitigate those rulings in the insurance litigation in the arbitration panel context.

Of course it is possible that an arbitration panel could misconstrue the Court's rulings or misapply them to the particular facts before it, but that is a risk that generally comes up often in the post-confirmation context where the courts are careful to limit the bankruptcy court's post-confirmation jurisdiction to enforcing its orders and not going beyond that to deciding every dispute that may have some aspect of it that involves an interpretation of the court's ruling, and it would apply to that dispute.

I do not believe, although of course I am again looking into the future, that the former situation would occur with regard to the defenses that have been asserted as potential defenses by the plaintiffs here in opposition to the motion and that therefore the arbitration panel would not be looking to undo the Court's rulings. If that were the case, I believe that there would be authority to stay, at that point, the arbitration. But of course that is a prediction upon a prediction and probably upon a further prediction. See generally Netflix v. Relativity Media, LLC (In re Relativity Fashion, LLC), 696 F. App'x 26 (2d Cir. Aug. 22, 2017).

In any event, with the representations made on the record today and upon which I am relying, I do not believe that the potential for misconstruing the Court's rulings, whatever they might be, that would potentially give rise to a defense in the arbitration proceeding would warrant my precluding that arbitration proceeding from being held. More would be required.

I think I have largely addressed the pay-first issue already. I don't believe that the plan implicates the pay-first issue as it did in the United States Lines case. Rather, although again, the amount of money at stake here and the uses to which that money could be put are both very important, they don't have the level of importance tied into the plan process that would require me to deny the motion. Indeed, the disclosure statement for the plan does not list the failure to recover all of the insurance as a risk with regard to the implementation in obtaining the effective date of the plan.

I also do not believe that the potential extra cost of an arbitration process here, which could conceivably involve 16 different arbitrations, although I believe that in light of that cost, the insurers themselves, as they have represented they in all likelihood would do, would try to ameliorate that cost by conducting the arbitration proceedings in an efficient manner, including staging them

in an efficient manner, would warrant staying arbitration and instead proceeding with the case before the bankruptcy court, the adversary proceeding that is before the bankruptcy court.

Cost alone, unless that cost is so high as to deprive a debtor of insurance rights or a fundamental asset, whether it's insurance or something else, is not a basis for staying arbitration. Although the cost in MBNA v. Hill to the debtor in pursuing arbitration was significant to that debtor, in that the debtor was an individual debtor and enforcing the automatic stay is an important bankruptcy policy, the court nevertheless stated that the cost involved to that particular debtor in enforcing that debtor's rights under the Bankruptcy Code was not enough to override the arbitration provision where the debtor was looking for an affirmative recovery as opposed to simply enforcing the automatic stay and stopping the act that was in violation of the automatic stay from continuing.

It is also not clear to me that if conducted properly, in proper sequence, an arbitration process here would be even unduly costly given the limitation on appeals which would apply in an arbitration that of course does not apply in bankruptcy litigation. One also of course would not have the added litigation as evidenced by the motions to withdraw the reference over the conduct of a jury trial and

the bankruptcy court's ability to issue a final order as opposed to proposed findings of fact and conclusions of law.

The movants have stated, have confirmed on the record that they will be amenable if the plaintiffs are to staging the arbitrations in the order that the plaintiffs would want in the light of potential litigation on non-arbitrable matters in this adversary proceeding, and, frankly, I believe in the arbitrations themselves.

This was the issue or concern over undue multiplication of litigation and potentially inconsistent results for claim or issue preclusion purposes that led Judge Lane in the ResCap opinion after he found that arbitration was warranted to proceed to stay the arbitration until the non-arbitrated issues were decided before him. And I gather, although this isn't entirely clear from the opinion, that in fact the insurers agreed to such a stay to ensure that the litigations that were before the bankruptcy court and then before the arbitration panels would be conducted in an efficient manner.

So as to the insurers with a broad arbitration provision, I will grant the motion. Again, based on those representations as to not relitigating the Court's rulings in the arbitration, this Court's rulings, that is, in the arbitration, and, secondly, to defer to the debtors' choice as to whether the arbitrations would be stayed pending the

terminations in the non-arbitrated matters before me and as to conducting the arbitrations or staging them in an efficient way.

As to the other insurers with the more narrow provision, I conclude that the more narrow provision, as I said, does provide for arbitration, and the same rationale that I've gone through with regard to the other insurers applies to them.

In addition, the plaintiffs have raised two other points. First, they point out that in addition to the arbitration provision in the AIG Specialty and Ironshore provisions there is a so-called place of suit provision which provides that the -- if I could turn to it -- well, why don't I just read it? That's probably the safest thing to do. And I'm reading from Exhibit 8 to Mr. Breene's declaration which attaches the Allied World policy at issue. I'm sorry. I'm sorry, it would be Exhibit 2 to his declaration, which is the AISL policy whish states at Paragraph Y, Headed "Service of Suit", "In consideration of the premium charge, it is hereby understood and agreed that in the event of failure of American International Specialty Lines Insurance Company, herein called the Company, to pay any amount claimed to be due hereunder, the Company, at the request of the insured, will submit to the jurisdiction of a court of competent jurisdiction within the United

States.“Nothing in this condition constitutes or should be understood to constitute a waiver of the Company’s rights to commence an action in any court of competent jurisdiction in the United States to remove an action to a United States district court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States.” And then it agrees where service or process may be made. And finally it states, “Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the superintendent, commissioner, or director of insurance or other officer specified for that purpose in the statute or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of this contract of insurance and hereby designates the above-named counsel as the person to whom the said officer is authorized to mail such process or to a true copy thereof.”

The plaintiffs contend that this provision conflicts with the arbitration provision in Paragraph O in the -- on Page 23 where the parties submit to arbitration, and in particular because it provides for submission to the jurisdiction of a court of competent jurisdiction within the

U.S. in the event of a failure of the insurer to pay any amount claimed to be due hereunder, placing the emphasis on "claimed" as opposed to "failure" in that clause.

The movants respond by noting a substantial amount of caselaw interpreting service of suit provisions, including in this Circuit and holding that the two provisions can be reconciled or harmonized relatively easily by viewing the service of suit provision as one providing for agreement to jurisdiction to enforce an arbitration award, stemming from the seminal case of Montauk Oil Transportation Corp. v. Steamship Mutual Underwriting Ass'n (Bermuda) Ltd, 79 F.3d 295, 298 (2d Cir. 1996).

The movants correctly point out that part of the analysis by the Circuit in that case hinged upon a provision in the service of suit paragraph at issue there that doesn't exist here, which expressly acknowledged that that provision, the service of suit provision, did not, colloquially, undermine the parties' rights under the arbitration provision.

Certain cases since then applying the Montauk holding have noted similar language, including that additional provision. See Hudson Specialty Insurance Company v. New Jersey Transit Corp., 2015 WL 3542548 (S.D.N.Y. June 5, 2015). However, many other ones do not and instead rely upon the strong congressional policy in

favor of arbitration and the Circuit's view that the provision really is one going to an acceptance of jurisdiction, which when one harmonizes those two points would be acceptance of jurisdiction for enforcement purposes. See for example NECA Insurance Limited v. National Union Fire Insurance Company, 595 F. Supp. 955 (S.D.N.Y 1984); Ideal Mutual Insurance Company v. Phoenix Greek Insurance Company, 1984 WL 602, at *2 (S.D.N.Y. July 3, 1984); and Certain Underwriters at Lloyd's London v. Vintage Grant Condo Association, Inc., 2019 WL 760802 (S.D.N.Y. February 6, 2019). See also on this point and applying this interpretation, New Jersey Physicians United Reciprocal Exchange v. ACE Underwriting Agencies, Ltd., 2013 U.S. Dist. LEXIS 52035 (D.N.J. Apr. 11, 2013). See also BD Conde Partnership Limited v. Certain Underwriters at Lloyds, 2009 U.S. Dist. LEXIS 27443 (S.D.N.Y. March 31 -- I think it's 2005), which involved removal and not a conflict between an arbitration provision and not arbitration but again described the rationale of the service of suit provision is one that is limited to ensuring jurisdiction for enforcement purposes.

So, based on that analysis, although I think it is a fairly close question, I conclude that the service of suit provision in Paragraph Y of the parties' agreement does not give, as the plaintiffs have asserted, the plaintiffs the

option to either go to arbitration or alternatively to pursue the litigation in this adversary proceeding.

Finally, there is a dispute as to the Evanston insurance policy as to whether it provides for arbitration or not. That policy clearly provides that it will "follow the form" as stated, which is an AIG/Munich Insurance form, which is common language for excess insurers and incorporates the form referenced.

There is clearly an AIG form that provides for arbitration. It is asserted nevertheless by the plaintiffs that there is another policy that the Evanston policy could be an excess policy for that is not a Munich policy, but rather another policy that somehow morphed out of or into a Munich policy. However, although the name of that policy has been identified, I don't have any record as to how it would control here -- it is a so-called Gulf policy -- or even the language that would show the absence of an arbitration provision.

So at this point, I cannot conclude that arbitration would be not applicable to the Evanston policy. Of course if that is shown in the future, then arbitration would not lie as to it. The arbitrators would not be able to take on an arbitration that does not have a contractual basis like that. But for purposes of today's record and today's ruling, I cannot reach that conclusion.

So, again recognizing and relying upon the representations made to me by counsel for the insurers -- and no insurer has spoken up to contradict Mr. Koepff's representation -- that's K-o-e-p-f-f – that I have referred to earlier, so I believe it would be applicable to all the movants here, I will grant the motion and stay the adversary proceeding insofar as it applies to the movants.

I will ask one of the movants' counsel to submit an order consistent with that ruling. You don't have to go through obviously the lengthy bench ruling that I just gave you all. You can simply refer to the bench ruling. You also don't need to formally settle it on Mr. Breene or counsel for the plaintiffs, but you should run it by them to make sure that they are comfortable that it's consistent with my decision. And obviously CC them, CC plaintiff's counsel when you email it to chambers.

Does anyone have any questions about the ruling or the order? No? I'm seeing everyone shaking their head.

MR. CALHOUN: Your Honor, this is George Calhoun for Ironshore. You made a reference that insurers with a more narrow provision, and you mentioned Ironshore in that discussion. That argument didn't apply to Ironshore. And just in case there is an attempt --

THE COURT: Okay.

MR. CALHOUN: -- to appeal Your Honor's ruling, I

want --

THE COURT: I actually thought it had, but I stand corrected. In any event, if it did, I would still be granting the motion.

Okay. So I obviously had another very extensive set of motions to dismiss brought by the same insurers, that is the foreign insurers under Rule 12(b) for lack of personal jurisdiction. I tend to agree with Judge Lane that my ruling on arbitration would moot those motions. So my inclination is not to decide them at this time. Obviously if my arbitration ruling is reversed or if the parties decide they nevertheless want to proceed with the lawsuit in the adversary proceeding, it wouldn't be moot anymore. But at this point, it does seem to be moot. Am I missing something on that point?

MR. MCNALLY: No, Your Honor. Daren McNally, Clyde & Co., representing Chubb Bermuda. We filed the motion to dismiss for lack of personal jurisdiction. We agree with Your Honor that to the extent that the matter is stayed, that it doesn't really make sense to argue or have Your Honor decide it so long as it's not viewed as some sort of waiver of consent to personal jurisdiction.

THE COURT: Right. And I think the parties were careful to preserve that argument in their motions. Obviously to the extent they didn't in their motions

themselves, then that might be a waiver. But my finding it being moot would not add any additional facts to a waiver argument.

MR. LEVERIDGE: Your Honor, this is Rick Leveridge on behalf of the plaintiffs. We accept that conclusion.

There is one item of housekeeping that relates to the motions to dismiss for lack of personal jurisdiction.

As Your Honor may recall, when we filed our omnibus opposition, we filed material under seal because some of that material was discovery that the insurers have provided to us at jurisdictional discovery. We put off the issue. You've questioned whether (indiscernible) the designation. We put that off until now because the insurers recommended that and we didn't (indiscernible).

The one issue I have with -- I don't think it's moot with respect to the motion to seal because that material is in the record. Now, if the Court is happy with the current state of the record, that is they're under seal, that's fine. But if you're not, then I think we do need to take the housekeeping step of having the insurers review their designations of confidentiality and perhaps narrow them and then we would resubmit just so that we have a record that's clean.

MR. KOEPFF: Your Honor, this is Paul Koepff again. I'll make life easier for everyone. The insurers,

the arbitration insurers conferred. And we still have a confidentiality agreement with the plaintiffs (indiscernible) revisit. But anything that was filed by the plaintiffs we are no longer asking to be sealed.

THE COURT: Okay. All right.

MR. KOEPFF: So whatever has been --

THE COURT: That does make it easy.

MR. LEVERIDGE: It does.

THE COURT: That does make easy. That's a perfectly fine resolution of that issue. And, Mr. Leveridge, you summarized my reaction to the motion, which is that I thought it was probably overkill as to what was sought to be sealed and there would need to be more of a focused request and the parties were certainly well within their discretion not to go through that exercise until they saw how today turned out. And at this point, that could all be filed on the docket.

MR. LEVERIDGE: Okay, great. Thank you, Your Honor.

THE COURT: Okay. All right. So I'm going to turn back to the agenda then. But all those of you who are here on the arbitration motion and the motions to dismiss don't need to stay on. You can if you want to, but you can certainly be excused as well.

So I think that leaves two matters left on the

agenda. One is a motion which we've been carrying for a long time, which is the motion to lift the automatic stay to let an arbitration proceed. And I don't know if there's been any discussion between the parties about this point. It had been objected to by the debtors and the committee. And again, it's been sitting here by agreement as the plan has been negotiated and developed. Where does that motion stand at this point?

MR. CALHOUN: Your Honor, this is George Calhoun for Ironshore. I did have some conversations with Mr. Breene. And I think given Your Honor's ruling on the motion to compel arbitration that it stands to reason to grant our motion. And I think where this stands is that the Plaintiffs would reserve the right to ask that it be stayed pending any appeal they may bring. But otherwise, I don't think they're going to raise any additional arguments in opposition to it.

MR. BREENE: Your Honor, on behalf of the Plaintiffs, that is correct. We have no additional reason to seek to stay the motion -- the (indiscernible) arbitration. And we reserve the right to seek a stay of any and all of the arbitration subject to appeal. But, you know, there is no reason to have this one in a separate category.

THE COURT: Okay. All right. That's fine.

Frankly, the only one I had is maybe the parties wanted some time to just discuss the order that this would be done in. And you can certainly do that even if there's no stay. But despite the inefficiency of having multiple arbitrations, as I've said, that does not overcome the policy in favor of arbitration here. And I guess the debtors and plaintiffs do want to proceed promptly to get a determination. So I can understand Mr. Breene's position. So I will grant that motion --

MR. JOSEPH: Your Honor --

THE COURT: Oh, I'm sorry.

MR. JOSEPH: Your Honor, this is Gregory Joseph for the plaintiffs. I don't disagree with my co-counsel, but I do want to just make a point that we would assume that the Ironshore situation is wrapped up and Mr. Koepff's representation to Your Honor that the --

THE COURT: Well, again, I'm saying all of -- yes. I think that's the case.

MR. JOSEPH: Okay. Well, I just want to make that clear.

THE COURT: Right.

MR. JOSEPH: That's how we saw it, too.

THE COURT: Okay.

MR. JOSEPH: And I just wanted (indiscernible). Thank you.

THE COURT: Okay. All right. So, Mr. Calhoun, you can email the lift-stay order to chambers. Again, you don't need to formally settle it on notice to the Plaintiffs, but you should provide a copy to Plaintiff's counsel so they can make sure it's consistent with the ruling, and then copy them on the email to chambers when you email it in.

MR. CALHOUN: Thank you, Your Honor.

THE COURT: Okay. Thank you.

And then unless I'm wrong, I think the last matter on the calendar is a motion by Gulf Underwriters Insurance Company and St. Paul Fire and Marine Insurance Company under Rule 12(e) for a more definite statement.

MR. POLSTER: Yes, Your Honor. This is Joshua Polster from Simson Thatcher for Gulf St. Paul.

THE COURT: Okay. And the other one of these had been adjourned, but unless you tell me otherwise, I'm assuming this one is still going forward.

MR. POLSTER: Yes, that's correct, going forward.

THE COURT: Okay. All right. Okay. Well, I've read the motion and the memorandum in support and the memorandum in opposition and the reply memorandum. I guess I'm having a hard time seeing the basis for this relief. I think the only issue is that the debtors/plaintiffs have not identified all of the claims or any of the claims, the

underlying claims as to which they contend the insurance would apply. They define them generically. And I guess given that they've done that and defined the contracts at issue, and given the number of claims, I'm not seeing how this prevents filing an answer or otherwise moving at this stage.

MR. POLSTER: Yes, Your Honor. That's -- the basis of our motion is that Purdue hasn't identified which specific claim or claims it is seeking coverage for from my clients. And our clients' preferred route would be an early dispositive motion, a motion to dismiss. And to do so, we are entitled to know what are the specific claims for which Purdue is seeking coverage.

For instance, as Purdue mentioned in their complaint, the Gulf policies, Gulf and Purdue previously agreed to a settlement and release. Purdue says that Gulf is included as a defendant in this case to the full extent that the claims weren't previously released. That sentence is essentially a tautology. If Purdue is asserting that certain claims are not -- or sorry, certain claims were not released, then our clients are entitled to know which claims those are so we can make an early motion or not to evaluate and respond appropriately.

A similar issue exists with respect --

THE COURT: Well, I guess -- well, let's just take

that one. You can certainly answer, right, and say as a defense these claims are settled. Right?

MR. POLSTER: Yes, although it would make it very difficult to file a motion, and the answer wouldn't serve much purpose without notice as to what particular claims are if Purdue is contending that certain are or certain aren't -- to know what is being litigated here for our clients.

THE COURT: Well, and then as far as a motion is concerned, are you saying you can't make a motion under Twombly and Iqbal on Rule 8?

MR. POLSTER: I mean, we certainly -- if we were forced to, we could attempt to. But then in opposition, for instance, the Plaintiffs could contend, well, this claim doesn't apply for whatever reason, we are entitled to know that going into our motion if there are some claims that they're saying are --

THE COURT: But why are you entitled to know that other than under Rule 8?

MR. POLSTER: Because to be on notice of what Plaintiff's claims -- what their --

THE COURT: Give me a case. Give me a case. That's what I'm really asking for.

MR. POLSTER: Sure. Sure.

THE COURT: I don't see this here, particularly given the number of personal injury claims.

MR. POLSTER: The Bunge and MCS cases from the S.D.N.Y. cited in our papers are on point here. In both, policyholders were seeking coverage for losses and the courts granted 12(b) motions saying the policyholder had to give specifics on what losses it was actually seeking coverage for. The Certain Underwriters --

THE COURT: But the Bunge case is from 1940, right, where you have the bill of particulars requirement.

MR. POLSTER: Yes, that is correct.

THE COURT: All right. Okay. And I interrupted you. I was just focusing on the first point, which is the settlement point. But you were going to go on from there. There were other defenses that you said you weren't sure whether you could actually assert at this stage given this pleading.

MR. POLSTER: Yes. And just to return briefly, the Certain Underwriters v. MSC case, that's from 2020, a more recent case where the policyholder said essentially they're seeking coverage for cargo lost at sea and the court granted a Rule 12(b) motion saying, policyholder, you have to give notice what particular ship or ships were lost so the insurer can appropriately answer or move.

THE COURT: Okay. But there wasn't an issue there of, you know, hundreds of thousands of personal injury claims, right?

MR. POLSTER: That is true. I would say to that point that if it's a (indiscernible) issue or it's felt to be unreasonable, if there are exemplars that the Plaintiff can point to and say the basis, we're not looking to be unreasonable. We understand Rule 8. So examples could be a way to resolve this.

Returning to the point you mentioned. The other policy, St. Paul's, has a products exclusion which is also referenced in the complaint. If there are certain claims that Plaintiffs are saying don't fall within the exclusion, that's something we should be put on notice of in the complaint so we can either move or even in an answer to begin discovery with what is, like Your Honor said, 3,000 claims without knowing what specific claims are being asserted against us. That leads to excessive burden and waste that could be streamlined by just pleading what claims are at issue in the case.

THE COURT: But, again, the answer says see Paragraph X of our policy, we have an exclusion. That's our defense.

MR. POLSTER: Certainly. But then on a motion, again, we're left sort of arguing against something that hasn't even been put forward. And so we believe under the two cases I referenced, Bunge and the more recent one, the policyholder has to put the insurer on notice, here are the

claims we're seeking coverage for under your policies in this case.

THE COURT: Okay. All right. Anything else?

MR. POLSTER: No. I think that covers the issue. Thank you, Your Honor.

THE COURT: Okay. Who is going to be arguing this one on behalf of the plaintiffs?

MS. HUDSON: Good afternoon, Your Honor. Jenna Hudson (indiscernible).

THE COURT: Afternoon.

MS. HUDSON: I certainly can respond to the cases that have (indiscernible), but I'd like to ask first if Your Honor has any questions. Essentially where I end is where Your Honor started. So rather than reiterate all of our points, if there's anything in particular Your Honor would like to hear from us on, happy to respond.

THE COURT: Well, I guess I -- the motion is premised upon the assertion that the insurers can't appropriately respond to the complaint. And I think that comes down to not the identification of the policies, which they have and which are identified in the complaint, in the exhibit which is made a part of the complaint, but rather they can't reasonable prepare a response. And I guess clearly a motion to dismiss one can prepare because they have the defenses in mind and they can put those defenses in

an answer or in a motion to dismiss. And it may be that the complaint is so conclusory that that motion might be granted. I don't know.

But I guess I don't understand what other -- maybe this is a question for Mr. Polster. What other motion would you have in mind besides the motion to dismiss? That would be it, right?

MR. POLSTER: That's correct.

THE COURT: Otherwise, the parties go to discovery and you might make a summary judgment motion at some point.

MR. POLSTER: that's correct. A motion to dismiss would be what we would have in mind following getting to the claims.

THE COURT: All right. So isn't that really the Plaintiffs' lookout, that they don't satisfy Rule 8? Why are we going through this extra step, in other words?

MR. POLSTER: Certainly, Your Honor. And it was not our intent to create an extra step, rather to make a motion more efficient so it can be directed to whatever claims Plaintiffs are saying are at issue so that we can evaluate, one, whether such a motion at this stage is justified. And then, two, appropriately target the motion at any or all of the claims the Plaintiff say are at issue.

THE COURT: Okay. So let me ask, Ms. Hudson, what is the status of the claims -- the personal injury claims or

the allegedly insured claims as asserted against the Debtors? What status are they in at this point?

MS. HUDSON: The 614,000 claims, Your Honor?

THE COURT: Yes.

MS. HUDSON: Well, they vary. Some of them are merely subject to proofs of claim. Some of them there have been complaints filed. My understanding is that some have been resolved if not really resolved. I guess in sort kind of the gamut of stages that a claim could be.

They are, however --you know, we are sufficiently clear and we believe we've set forth in the complaint as much as we can in terms of the categories into which the claims fall without getting into nuances of individual claims.

For example, the complaint discussed the fact that there are claims that specifically focus on Purdue drugs. There also are complaints that include -- that allege that Purdue is liable due to other company's drugs. And finally, that Purdue is liable due to people having taken holistic drugs. And our view is that those categories of claims would be handled in various respects based on the differing policy language of the policy before us.

THE COURT: Okay.

MS. HUDSON: I don't know that that completely answers your question, Your Honor. But the direct answer to

your question is they are at various stages. There are 614,000 claims we're talking about.

THE COURT: Right. And they're on file, right? It's the claims that are filed by the bar date that you're asserting are covered claims here, right?

MS. HUDSON: Yes, Your Honor, with one caveat I would make, that I would want to check in on the status of -- to my understanding there are some claims that came in after the bar date. And I just --

THE COURT: Right. But that's a small number. And they are filed, too. They just came in late.

MS. HUDSON: Correct. We are focused on the 614,000 that were submitted by the bar date.

THE COURT: Okay. All right. And that's referred to in the complaint.

MS. HUDSON: Yes, Your Honor.

THE COURT: Okay. So, again, look, other than forcing the Debtor into a position that I don't think it needs to be in consistent with Rule 8 to identify each of these claims, I don't see the purpose of this motion. So I'm going to deny the motion. I just -- these types of motions are not favored. The courts clearly believe that in almost all cases they should -- the concerns raised by them should really be dealt with in the discovery process and really only are warranted where the pleading just is

unintelligible so the district court can't make out the actual theories of liability.

Based on my review of the complaint, I don't think that's the type of complaint this is. I think the insurer is aware, obviously, of its policy. It's aware of the claims generally that are being asserted as covered by the policies and references them, and they can be -- those pleadings are certainly pleadings that one can take judicial notice of in connection with the motion to dismiss. And it's obviously to me under those circumstance a completely unwarranted burden to have to specify each of the claims. At this point they're just filed claims, some of which, as Ms. Hudson said, do have lawsuits attached to them, but they have not been determined. It's unduly burdensome to have Plaintiff have to put that in a complaint. It's just -- you know, and it's not required under Rule 8 I don't believe. So I'll deny the motion. See Bldg. Serv. 32BJ Health Fund v. Team Clean, Inc., 2015 WL 3953638 at *1 (S.D.N.Y. June 29, 2015) and the authorities cited therein, as well as Lee v. Karaoke City, 2020 WL 5105176 at *10 (S.D.N.Y. Aug. 31, 2020) and the cases cited therein, and Section 12.36, [1]-[2], Moore's Federal Practice, Third, 2021. And as the authors of the treatise state, among other things, the court -- and this is at subparagraph [3], the courts will already -- will take into account the knowledge and sophistication

of the defendant. And here again the claims themselves are on the docket. They are a matter of public record and I think the Defendant can make sense of the complaint in light of all that and the statements in the complaint.

So I'll ask Ms. Hudson to email an order to chambers denying the motion for the reasons stated on the record. You don't need to formally settle that, but you should run it by Mr. Polster before you email it in and copy him on the email so he can make sure it's consistent with my ruling.

MS. HUDSON: Yes, Your Honor.

THE COURT: Okay. Thank you. Okay. I think that concludes this morning's agenda. Did I miss anything? No? Okay, very well. Thank you all. I'll look for those orders then, those three orders.

(Whereupon these proceedings were concluded at 2:09 PM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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